SUPREME COURT, U. S.

JAN '21 1953

Supreme Court of the United States

October Term, 1952

No. [illegible]

THE CITY OF LOS ANGELES, a municipal corporation, [illegible]

Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, [illegible]

Appellees.

On Appeal From the Supreme Court of the State of California.

JURISDICTIONAL STATEMENT.

[illegible]

Of Counsel:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. .....

THE CITY OF LOS ANGELES, a municipal corporation, the CITY OF LONG BEACH, a municipal corporation, ROGER ARNEBERGH and WALHFRED JACOBSON,

Appellants,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, and C. LYN FOX, PETER E. MITCHELL, MATTHEW J. DOOLEY, THEODORE H. JENNER and EVERETT C. McKEAGE, as members of and constituting the said Public Utilities Commission,

Appellees.

On Appeal From the Supreme Court of the State of California.

JURISDICTIONAL STATEMENT.

This is an appeal from the judgment of the Supreme Court of the State of California entered on May 21, 1958, in the proceeding, as above-entitled, under that Court's S. F. No. 19900.

That judgment denied the appellants' request for a writ to review the order, Decision No. 55936, of the appellee, the Public Utilities Commission of the State of California (the "Commission").

The California Supreme Court rendered no opinion, but the effect of its judgment is that the Constitution of the United States does not guarantee to customers of regulated public utilities the right to a due process hearing in

connection with a final State administrative determination that they must pay increases in utility charges. Consequently, the judgment conflicts with this Court's decisions in *Wichita Railroad & Light Co. v. Public Utilities Commission* (1922), 260 US 48, 67 L ed 124, 43 S Ct 51, and in *Hollis v. Kutz* (1921), 255 US 452, 65 L ed 727, 41 S Ct 371.

The Commission's order authorized increases of approximately $1,250,000 per month in telephone charges by four public utility corporations[1] to their subscribers in the Los Angeles area. A proceeding had just commenced before the Commission upon a rate increase application by one of the companies. Without prior notice and contrary to the Commission's existing general orders and established rules of procedure, the other three companies joined with the applicant company in a motion for increased charges by all of them, solely in the Los Angeles area. (Two of the companies had not even filed applications for increased rates.)

Cross-examination on the essential issues was not completed. Evidence from the Commission's own staff, or from the appellants or other affected subscribers was not received, and the essential issues were not determined.

Moreover, the California Commission admits that the Constitution guarantees a full and fair hearing to a utility before its interests are adversely affected, and it uniformly grants utilities such a hearing before decreasing rates.

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[1]The Pacific Telephone and Telegraph Company, General Telephone Company of California, California Water & Telephone Company and Sunland-Tujunga Telephone Company. These corporations appeared as respondents below, under Public Utilities Code Section 1758, and service is made on them herein as if they were appellees.

Nevertheless, claiming power to authorize increased utility charges *ex parte,* the Commission authorized the requested increases.

Although the order was designated as "interim" pending the completion of the proceedings, the authorized increases were not conditional and there was no provision for refunds if the Commission's subsequent final order, after all evidence had been received, should determine that they had not been justified.

On May 6, 1958 (by Decision No. 56652, 56 Cal. PUC 277, 23 PUR 3d 209), after further proceedings, the Commission affirmed and ratified its interim decision, effective May 27, 1958.

The prospective effect of the Commission's May 6th decision is not involved here. But the increased charges were effective from January 20, 1958, until May 27, 1958, solely by force of the interim order, so during that four-month period the affected telephone subscribers were required to pay the telephone corporations more than $5,000,000 in increases of telephone charges.

Decision No. 55936 thus denied equal protection of the laws to the affected telephone subscribers and deprived them of their properties without due process of law. These propositions were urged to the Court below, and previously to the Commission. Since that decision is here equivalent to a statute, the denial of the appellants' petition that the California Supreme Court review and annul Decision No. 55936 brings the propositions here that the appellants and those they represent as affected telephone subscribers have been deprived of their properties by State action without due process of law and that they have been denied the equal protection of the laws, contrary to the

Fourteenth Amendment to the Constitution of the United States.

The appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of this appeal, and that the questions presented are substantial.

Opinion Below.

The judgment of the Supreme Court of the State of California, here sought to be reviewed, was rendered without opinion. It is reported in 50 Advance California Reports, No. 8, Minutes, page 2, and a copy is attached as Appendix A.

The Commission's Decision No. 55936 is reported at 56 Cal. PUC 80, and a copy is attached as Appendix B.

Jurisdiction.

Under Section 1759 of the California Public Utillties Code (Appendix G, p. 78), the Supreme Court of California is the only court which has jurisdiction to review an order or decision of the Commission. Consequently, after their timely petitions for a rehearing[2] had been denied by the Commission,[3] and within the time provided by Section 1756 of the California Public Utilities Code (Appendix G, p. 77), the appellants applied to the Supreme Court of California for review of Decision No. 55936.

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[2]The Los Angeles-Arnebergh petition is attached as Appendix C. The Long Beach-Jacobson petition is attached as Appendix D.

[3]The Commission's decisions, No. 56048 and No. 56049, denying a rehearing, are attached as Appendices E and F.

The judgment of the Supreme Court of California denying review (Appendix "A") was entered on May 21, 1958.

The appellants' notice of their appeal to this Court from that judgment was filed on August 15, 1958, with the Clerk of the California Supreme Court.

On September 24, 1958, upon the appellants' application, the California Supreme Court entered its order enlarging the time for docketing this case on appeal until sixty days after the final determination by that Court of a connected proceeding under that Court's S. F. No. 20007.

Such sixty day period has not passed: on November 26, 1958, the California Supreme Court entered its order denying the petition in such proceeding, S. F. No. 20007.

The jurisdiction of this Court is invoked under 28 United States Code, Section 1257(2): the appellants' petition to the Supreme Court of California having drawn in question the validity of the Commission's Decision No. 55936 on the ground that such decision was repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, such Decision No. 55936 being equivalent to a statute of the State of California for purposes of this Court's jurisdiction on appeal, and the decision of the California Supreme Court being in favor of the validity of such Commission decision.

The following decisions sustain the jurisdiction of this Court to review the judgment below on direct appeal:

> *Atchison, Topeka & Santa Fe Railway Co. v. Public Utilities Commission* (1953), 346 US 346, 348, 98 L ed 51, 58, 74 S Ct 92

Live Oak Waters Users' Assoc. v. Railroad Com. (1926), 269 US 354, 356, 70 L ed 305, 308, 46 S Ct 149

Lake Erie & W.R. Co. v. Public Utilities Com. (1919), 249 US 422, 424, 63 L ed 684, 687, 39 S Ct 345

Such state statute, Decision No. 55936, 56 Cal. PUC 80, the validity of which is here involved, is Appendix B.

Constitutional Provisions and Statutes Involved.

The constitutional and statutory provisions involved are Section 1 of the Fourteenth Amendment to the Constitution of the United States, Sections 22 and 23 of Article XII of the Constitution of the State of California, and Sections 20, 216, 304, 310, 451, 453-455, 489-491, 701, 728, 729, 734, 735, 1001, 1701, 1702, 1705-1707, 1709, 1731-1733 and 1756-1761, of the Public Utilities Code of the State of California. They are printed in their pertinent parts in Appendix G, *infra,* pages 67 to 79.

Under the statutory scheme a Commission order increasing telephone charges is final until the Commission makes a different determination, unless it be annulled by the California Supreme Court upon review, and after denial of such review no relief therefrom can be obtained except by this Court's determination that the order violates rights guaranteed by the Constitution of the United States.

Question Presented.

Does the due process provision of the Fourteenth Amendment to the Constitution of the United States protect utility customers so as to entitle them to a hearing by a State public utilities commission before such commission may authorize increases in the charges which the customers must pay for the utility's services, in cases where:

(a) by State law the customers are denied an opportunity to obtain substantially similar services elsewhere;

(b) the State law does not provide for any judicial trial of the issues, or for conditional increases pending a hearing before the Commission *and* for refunds of such increases according to a subsequent determination upon such hearing, and

(c) otherwise under State law the commission's "interim" order of authorization is final and conclusive upon the affected customers, as to the increases which become due, owing and payable according to the "interim" order of authorization?

Or, as the appellee Commission asserted to the Supreme Court of California, is it a "fanciful contention that a customer of a utility has a constitutional or statutory right to notice before the Commission, lawfully, may increase the rates of the utility," and, as further contended by the appellee commission, does the Fourteenth Amendment consequently insure due process only to the public utility corporation in a State commission rate proceeding and *not* to the customers of the utility?

Statement.

The judgment below denied (without opinion) a review of the Commission's Decision No. 55936. The record before the court comprised the appellants' verified petition, the unverified answers of the Commission and the telephone companies and the appellants' verified reply thereto. Essentially the answers raised legal issues. To the extent that they urged factual assertions in denial or avoidance, they were traversed by the appellants' reply, so that the judgment resolved legal issues solely. Upon this appeal from that judgment, the facts are established by the appellants' petition below. In summary:

Telephone service is necessary to individuals and business within the Los Angeles area. Telephone service in the Los Angeles area is monopolistic, by State policy and authority. Telephone charges to subscribers in California are fixed by State action. Thus, in the Los Angeles area one must obtain telephone service from one or the other of the four telephone companies specified by State action, and must pay that company's charges.

Under these circumstances increases in charges to telephone subscribers by State authority operate to deprive the subscribers of their property and they are entitled under the Fourteenth Amendment to a due process hearing before any such increase can validly be finally effected.

Before the Commission's Decision No. 55936 California telephone subscribers had generally been accorded a due process hearing before increases in charges to them were authorized by State action.

That decision was rendered in proceedings which included an application by one of the companies (Pacific) for authority to increase its charges. That application

was filed and the proceeding thereon was going forward upon notice and according to the Commission's general orders and rules of procedure.

During an initial hearing upon that application Pacific and the other companies moved, without prior notice and in derogation of the Commission's general orders and rules of procedure, for "interim" authority to increase their charges for certain interchanged services, in the Los Angeles area solely.

By the Commission's Decision No. 55936 such increases in charges to telephone subscribers in the Los Angeles area[4] were effected with finality by State action, without a full hearing, and the appellants and the other subscribers whom they represent were thus deprived of their properties without due process of law.

By that Decision No. 55936 exchange telephone charges for multi-message unit calls in the Los Angeles area were authorized to be increased by more than $15,000,000 per year. The decision did not authorize or require any decreases in other charges, and the authorized increases thus added a net cost burden of $15,000,000 to that previously carried by the affected subscribers.

The Commission designated its decision as "interim" but it made no provision therein for any subsequent adjustment or for any refunds to the affected subscribers.

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[4]Specifically, the Commission's Decision No. 55936 authorized increases in exchange telephone "multi-message unit" charges throughout the "Los Angeles Extended Area." That area is approximately the same as the Los Angeles metropolitan area: it extends over portions of the Counties of Los Angeles and Orange and includes the cities of Los Angeles and Long Beach as well as other cities and urban areas within the Los Angeles metropolitan area. References herein to the Los Angeles area are to such Los Angeles Extended Area.

Thus the increases authorized were not actually provisional or temporary—they were finally effective until further order of the Commission. No more could be said of any order increasing rates.[5]

Despite the appellants' protests, these increases in charges were authorized by the Commission, pursuant to mere motions, without there being a sufficient proceeding or defined issues before the Commission, without adequate notice of the proposal to the appellants or the subscribers they represent, without opportunity for the subscribers to prepare their case, without evidence from the Commission's own staff or from any parties other than the movant companies, without an adequate opportunity for cross-examination, without evidence upon all essential issues, without adequate findings by the Commission, and otherwise without according a full due process hearing to the affected subscribers.

Moreover, the California Commission grants a full and fair hearing to a utility corporation before it requires rates to be decreased, and since Decision No. 55936 deprived the telephone subscribers of their properties without due process of law it thus also denied them the equal protection of the laws.

Consequently, the appellants sought review from the Supreme Court of California, but that Court denied their petition to bring up the record so that the Commission's decision might be annulled.

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[5]The authorized increases were made effective on January 20, 1958. By Commission order, Decision No. 56109, dated January 17, 1958, such records are required to be kept by the telephone companies involved that refunds to the customers may be made following the annulment of Decision No. 55936.

The appellants' petition rested upon the fact that the Commission had authorized increased charges to them and to the subscribers they represent without first according a due process hearing, and upon the appellants' claims that the California statutes and the Fourteenth Amendment alike required the Commission to complete a due process hearing before it should be empowered to authorize increases in charges to telephone subscribers.

Thus, the judgment of the California Supreme Court precisely sustains the validity of the Commission's Decision No. 55936 and holds that the Fourteenth Amendment does not entitle the appellants and the telephone subscribers they represent to be heard upon final increases in telephone charges to them, by State authority, although the telephone utility corporation enjoys a monopoly under a grant of privilege by connected State action.

There is no room for any suggestion that the federal question does not survive to this Court. Since the appellants' petition was denied without a hearing or a review of the record before the Commission, the judgment of the California Supreme Court assumed the facts alleged by the appellants and determined their insufficiency as a matter of law. There was only one basis for an independent determination of such insufficiency on state grounds: it lay in the Commission's suggestion that the appellants' petition was premature, but that suggestion has been laid to rest beyond all question in subsequent state proceedings.[6]

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[6]In order to settle this procedural question a second petition for review was filed under S. F. No. 20007. That petition was denied by the California Supreme Court after the Commission and the telephone companies had pleaded as *res judicata* the judgment of May 21, 1958, from which this appeal is taken.

Although the appellants' petition to the California Supreme Court urged their due process entitlements under the California statutes as well as under the Fourteenth Amendment, the federal question survives, since the judgment of the Court below necessarily expressed its determination that the appellants had no rights at all—that captive public utility customers have no right to a hearing either under the California statute or under the Fourteenth Amendment.

In the proceedings below the appellant cities appeared in behalf of industrial, commercial and residential subscribers within their boundaries and in effect in behalf of all of the subscribers within the Los Angeles area who would otherwise have been without representation.

The appellants Arnebergh and Jacobson appeared before the Commission as individual subscribers when the Commission's outright denial of due process rights was manifested by its Decision No. 55936: they then immediately urged such denial and petitioned for a rehearing by the Commission upon that ground.

The appellants' petition for review by the California Supreme Court was necessarily brought by them in similar representative capacities and their appeal to this Court is in behalf of all telephone subscribers within the Los Angeles area.[7]

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[7]The fact is obvious that the individual Arnebergh and Jacobson appearances were originally motivated and that they continue to be motivated by the purpose that the essential issues herein be heard and determined on the merits, against quibbles by the appellees that municipal corporations may not urge federal due process claims in their own behalf.

How the Federal Question Was Raised.

The question under the Fourteenth Amendment, of the deprivation of property without due process of law from the appellants and from the other telephone subscribers within the Los Angeles area, was raised at once to the California Supreme Court by the appellants' petition to that Court for review of the Commission's Decision No. 55936.

(1) The appellants Los Angeles and Roger Arnebergh initially raised that question by the incorporation of their petition to the Commission for a rehearing (Pet., Appendix "B," pp. 21-41 [Appendix C hereto, pp. 25-45]), where at pages 25, 30-32 and 35 (pp. 29, 34-36 and 39 of Appendix C hereto) they had specifically asserted the Commission's violation of their Fourteenth Amendment rights in its denial of a due process hearing.[8]

(2) The appellants Long Beach and Walhfred Jacobson initially raised that question by the incorporation

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[8]"Finally, this petition is based upon the 14th Amendment to the Constitution of the United States . . ." (Appendix C hereto, p. 29.)

"An increase in charges to telephone subscribers without such a finding and determination effectively deprives them of their property without due process of law.

"Due process of law, under the 14th Amendment and according to historical concepts of ordinary justice and equity, require that issues be framed in a proper proceeding; that due and adequate notice of hearings be given, that witnesses be publicly examined; that those who would be adversely affected have a full opportunity for cross-examination; that there be an adequate opportunity to prepare and present material, competent and relevant evidence. But due process of law was not followed before the issuance of Decision No. 55936, purporting to authorize the interim increase. Consequently,

of their petition to the Commission for a rehearing (Pet. Appendix "D," pp. 51-60 [Appendix D hereto, pp. 47-56]), where at pages 52, 53 and 58 (pp. 48, 49 and 54 of Appendix D hereto) they had specifically asserted the Commission's violation of Fourteenth Amendment rights in its denial of a due process hearing.[9]

It should be noted that the denial by the Commission of Long Beach's and Jacobson's Fourteenth Amendment rights had been absolute, as was shown in their petition for a rehearing (Par. 5, Appendix "D" hereto, p. 54).

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if such increase is permitted to go into effect, all ratepayers in the Los Angeles extended area will be unconstitutionally deprived of property without due process of law!" (Appendix C hereto, pp. 34-35.)

"The accomplishment of such a discriminatory result without a full and adequate hearing effectively deprives the affected subscribers of their property without due process of law, by compelling them to pay excessive and exorbitant telephone rates without having a fair opportunity to be heard." (Appendix C hereto, p. 36.)

[9]"The Commission lacked jurisdiction and acted without authority in making its interim order contained in Decision No. 55936 in the absence of a full-scale hearing on the operations of all four companies in connection with applications by all for rate increases." (Appendix D hereto, p. 48.)

"That said Decision No. 55936 is violative of that portion of Section 1 of the 14th Amendment to the United States Constitution which reads as follows: '. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'" (Appendix D hereto, p. 49.)

"As was very clearly and fully developed at the hearing on this motion in San Francisco, no notice was given to the ratepayers in General's service area with respect to the hearing on said motion. . . . This lack of notice and lack of adequate opportunity to cross-examine the witnesses testifying in support of said motion, in the opinion of your Petitioners, clearly constitutes a violation of constitutional rights guaranteed by the 14th Amendment to the Constitution of the United States . . . and has deprived your Petitioners of their aforesaid constitutional rights." (Appendix D hereto, p. 54.)

Telephone subscribers served by the Pacific Telephone and Telegraph Company in the Los Angeles area had at least received notice of Pacific's application for a general rate increase and of the initial hearing thereon,[10] but no notice whatever had been given to Long Beach or to Walhfred Jacobson and the other subscribers served by General Telephone Company of California that General's motion for increased rates within Long Beach and elsewhere would be entertained by the Commission.

(3) Los Angeles, Arnebergh, Long Beach and Jacobson, in their own behalf and in behalf of the other telephone subscribers throughout the Los Angeles area, further explicitly raised the due process question under the Fourteenth Amendment throughout the body of their joint petition to the California Supreme Court (see the record herein), and specifically at pages 2, 4, 5-7, 8, 9, 11, 12, 14, 19, 26, 27, 33-42, 45 and 46.[11]

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[10]However, they had no notice that the Pacific Company, much less the other three companies, would move for an "interim" increase, either at this initial hearing or at all.

[11]". . . (under the) Constitution . . . the Commission may not authorize any such increase in subscribers' telephone charges except: . . . (upon issues framed, after a full public hearing upon notice, upon substantial evidence, after an opportunity, following adequate notice, to cross-examine utility witnesses and to prepare and adduce evidence, and upon adequate findings). None of this was done." (Pp. 5-6.)

The principal question presented by the petition was introduced as follows:

"May the Public Utilities Commission, under the Constitution and statutes of the State of California, and consistently with the due process clause of the Fourteenth Amendment to the Constitution of the United States, entertain and grant a motion resulting in an 'interim' order for substantial increases in telephone rates: . . . (without completing a hearing thereon with all of the incidents of due process)?" (Pet. p. 8.)

The Fourteenth Amendment question was again urged specifically, at pages 3-9, 16-29, 33, 35-39, and 48-57, of the appellants' reply to the answers of the Commission and the telephone companies. In the submission of that reply the appellants said in part:

> "As has been shown under Point II of this reply, the Fourteenth Amendment and the decisions of the Supreme Court of the United States (notably in *Wichita Railroad & Light Co. v. Public Utilities Commission of the State of Kansas* (1922), 260 US 48, 67 L ed 124) establish due process rights in consumers, apart from any statute.
>
> "Due process requires a full hearing. There was not a full hearing here, as the Commission's answer and Decision No. 55936 itself clearly show. Consequently, the writ prayed for should issue, and upon its review of the whole record, this Court should annul the Commission's Decision No. 55936." (Reply, pp. 56-57, record herein.)

The judgment of the California Supreme Court (Appendix A) denied, without opinion, the appellants' petition for review, and thereby categorically rejected the appellants' Fourteenth Amendment claims.

By such judgment the California Supreme Court necessarily concluded and determined that the Fourteenth Amendment does not establish any rights in public utility customers to be heard upon proposals that the utility's charges to them be increased by State action. Moreover, it is obvious that if public utility customers have no constitutional right to be heard upon rate increase proposals, they have no right to be heard in any connection

with respect to State action in the establishment and regulation of privately owned public utilities, or with respect to franchise grants to such utility corporations.

Since the Commission's Decision No. 55936 was drawn in question by the appellants' petition to the California Supreme Court on the ground of its being repugnant to the Fourteenth Amendment, since such decision is equivalent for jurisdictional purposes to a statute of the State of California, and since the judgment below of May 21, 1958, favored the validity of that decision against the appellants' claims, this Court has jurisdiction on appeal, under 28 United States Code Section 1257(2), to review that judgment of the California Supreme Court.

ARGUMENT.

The Federal Questions Are Substantial.

1. The issues involved in this appeal are vital to every telephone, gas, electric power, water and other utility customer, and thus to nearly every person in the nation.

They involve the right of the ordinary citizen to protection by the Fourteenth Amendment in matters which concern his daily life.

In this respect this case is almost unique. Causes in this constitutional area brought to this Court on behalf of individual people usually involve pleas by persons charged with serious crimes or suspected of subversive conduct. This Court seldom has an opportunity to make it clear that constitutional guarantees extend also to the ordinary law-abiding and productive citizen, that they protect every

person, whether he be accused of wrongful acts, or whether, as here, he asks only that a State administrative commission give him a full hearing before it increases the prices he must pay to the private corporation with which the State requires him to deal for his necessities.[12]

The Constitution is, of course, not less solicitous of rights in property than of rights of speech, belief or conduct (*Shelley v. Kraemer* (1948), 334 US 1, 92 L ed 1161, 68 S Ct 836).

The fact that such a cause as this one is infrequent underscores the fact that there has previously been almost

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[12]As this Court said in *International Brotherhood v. Vogt* (1957), 354 US 284, 287, 1 L ed 2d 1347, 1349, 1350, 77 S Ct 1166, "It is inherent in the concept embodied in the Due Process Clause that its scope be determined by a 'gradual process of judicial inclusion and exclusion,' *Davidson v. New Orleans*, 96 US 97, 104, 24 L ed 616, 619. Inevitably, therefore, the doctrine of a particular case 'is not allowed to end with its enunciation and . . . an expression in an opinion yields later to the impact of facts unforseen' *Jaybird Min. Co. v. Weir*, 271 US 609, 619, 70 L ed 1112, 1117, 46 S Ct 592 (Brandeis, J., dissenting.)" And see—*Sweezy v. New Hampshire* (1957), 354 US 234, 266, 1 L ed 2d 1311, 1333, 77 S Ct 1203. The decisions of this Court, by their inclusions within the due process concept, demonstrate this Court's concern for the constitutional guarantees accorded to the individual who is directly confronted by exercises of State power, as, for example, among recent cases, in *Speiser v. Randall* (1958), 357 US 513, 2 L ed 2d 1460, 78 S Ct 1332; *Payne v. Arkansas* (1958), 356 US 560, 2 L ed 2d 975, 78 S Ct 844; *Yates v. United States* (1957), 354 US 298, 1 L ed 2d 1356, 77 S Ct 1064; *Sweezy v. New Hampshire* (1957), 354 US 234, 1 L ed 2d 1311, 77 S Ct 1203; *Watkins v. United States* (1957), 354 US 178, 1 L ed 2d 1273, 77 S Ct 1173; *Konigsberg v. State Bar* (1957), 353 US 252, 1 L ed 2d 810, 77 S Ct 722, and *Schware v. Board of Bar Examiners* (1957), 353 US 232, 1 L ed 2d 796, 77 S Ct 752 (cf *Re Summers* (1945), 325 US 561, 89 L ed 1795, 65 S Ct 1307); *Fikes v. Alabama* (1957), 352 US 191, 1 L ed 2d 246, 77 S Ct 281; *Slochower v. Board of Higher Education* (1956), 350 US 551, 100 L ed 692, 76 S Ct 637; *Wieman v. Updegraff* (1952), 344 US 183, 97 L ed 216, 73 S Ct 215 and *Rochin v. California* (1952), 342 US 165, 96 L ed 183, 72 S Ct 205, 25 ALR 2d 1396.

universal recognition that the Constitution protects utility customers as well as utility corporations.

But when that principle is categorically denied in a cause before this Court, as it is here, apparently for the first time in more than thirty years, a federal question of the highest importance is presented.

General recognition of this principle has heretofore been compelled by the decisions of this Court in *Hollis v. Kutz* (1921), 255 US 452, 65 L ed 727, 41 S Ct 371, and in *Wichita Railroad & Light Co. v. Public Utilities Commission* (1922), 260 US 48, 67 L ed 124, 43 S Ct 51.

In *Hollis* this Court recognized that individual utility customers have constitutional standing, although on the merits it held that more favorable rates to the government did not deny them equal protection. And in *Wichita* this Court directly determined, according to fundamental constitutional principles,[13] that the exercise of governmental authority to grant a monopolistic privilege to a public utility corporation constitutionally requires correlative protection to its customers, that both the utility corporation and the customers are deprived of property where the

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[13]In *Panama Refining Company v. Ryan* (1935), 293 US 388, 432, 79 L ed 446, 465, 55 S Ct 241, this Court cited its *Wichita* decision, quoting the language there relating to the requirement that in the delegation of legislative power the administrative agency must have enjoined upon it a certain course of procedure and certain rules of decision in the performance of its function. And there this Court also referred to its decision in *Mahler v. Eby* (1924), 264 US 32, 44, 68 L ed 549, 554, 44 S Ct 283, where it had said that in the *Wichita* case " 'We held that the order in that case made after a hearing and ordering a reduction was void for lack of the express finding in the order. We put this conclusion not only on the language of the statute but also on general principles of constitutional government.' "

price between them is determined by State action, and that the customers as well as the utility corporation are, under the Fourteenth Amendment, entitled to a fair hearing before that price is fixed by State action.[14]

Those principles are clear from *Wichita,* and no suggestion has been found that this Court has any disposition to depart from them. Nevertheless, there has been less than a unanimous understanding,[15] and now it appears that the Supreme Court of California has misconstrued this Court's determinations in *Wichita.*

2. The importance of the questions presented is further emphasized by considering the consequences if this Court were not to determine this appeal on the merits.

While this Court has warned that its dismissal of an appeal does not necessarily imply its agreement with the lower court's judgment, realities must be considered: unquestionably, dismissal here would be construed by the

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[14]This Court's *Wichita* decision may be considered as a development of the views expressed by Mr. Justice Miller in his concurring opinion in *Chicago, Milwaukee and St. Paul Railway Company v. Minnesota* (1890), 134 US 418, 460, 33 L ed 970, 982, 10 S Ct 462. From his ten propositions of public utility law, it is clear that the interposition of State action in fixing utility rates entitles customers as well as vendors to due process observance. And see *Smyth v. Ames* (1898), 169 US 466, 544, 545, 42 L ed 819, 848, 18 S Ct 418, where this Court held that a public utility corporation "performs a function of the state," and that lawfully a public utility customer can be charged only just and reasonable rates.

[15]As in *Southern Oil Company v. Yale Natural Gas Company* (1923), 89 Okla. 121, 214 Pac. 131 and *Bartlesville v. Corporation Commission* (1921), 82 Okla. 160, 199 Pac. 396; and see *State v. Rawlings* (1951), 229 Ind. 552, 99 NE 2d 597; *Lenihan v. Tri-State Telephone & Telegraph Co.* (1940), 208 Minn. 172, 293 NW 601; *Eagle-Pitcher Lead Company v. Henryetta Gas Company* (1925), 112 Okla. 65, 239 Pac. 890; *Consumers Gas Company v. Corporation Commission* (1923), 95 Okla. 57, 219 Pac. 126.

Commission, by the California courts, by California utilities and by California customers as the equivalent of affirmance. And since litigation in this field is closely watched and extensively reported, the construction would inevitably spread and be accepted throughout the nation that this Court had overruled *Wichita* and now established as the law of the land that in the field of public utility regulation the Fourteenth Amendment protects only the utility corporations—that the captive customers have no standing and are not entitled under the Constitution to notice or a hearing before they are required by State action to pay increased charges.[16]

Notice and hearing by grace or privilege are of little value, and they will not permit or encourage forthright advocacy of customer interest. There can be no doubt, if customers and their representatives come to understand that they speak without right, that customer participation in regulatory proceedings will be effectively discouraged. Most probably, as the regulatory commissions grow to believe that they have such unrestricted powers, and accordingly to have increasing faith in their own omniscience, their overt repulse of the customers will hasten the time when they will deal with the utilities' proposals in chambers.

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[16]As to recent decisions of this Court on due process notice and hearing requirements, not met below, see *Walker v. Hutchinson* (1956), 352 US 112, 1 L ed 2d 178, 77 S Ct 200; *Joint Anti-Fascist Refugee Com. v. McGrath* (1951), 341 US 123, 95 L ed 817, 71 S Ct 624 and *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 US 306, 94 L ed 865, 70 S Ct 652.

Indeed, such is the Commission's claim of power. Its short answer to the appellants' complaints that it had denied them a due process hearing was its assertion that it is empowered to authorize increased utility charges *ex parte* (Decision No. 56048, Appendix E, p. 61). The full sweep of this claim by a lay commission is best seen simply by reference to a desk dictionary, Webster's New Collegiate (1956), which defines *ex parte* thus: "Upon, from, or in the interest of, one side only."

The proposition that the Constitution protects only the utility, and not the customers, is so shocking to a sense of justice and fairness as to be incredible.

And not only does the Fourteenth Amendment provide that no person shall be deprived of property by any State "without due process of law" but it also provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." To assert that a utility is entitled under the law to a hearing before it can be adversely affected by a rate change, but that its customers are not entitled to a hearing before their rates are adversely affected, is to completely ignore the equal protection clause. It is incomprehensible that such an assertion can be seriously made.

To contend that the customers of a utility do not need a hearing because the regulatory commission will "protect" their interests (see Appendix E, p. 61) is sophistry. The correlative argument could be made with equal logic (and possibly with greater justification),[17] that a utility does

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[17]From its resources of technical and legal talent, and from its control of the business, a utility's management could present such a case to a commission *ex parte* that there would be little likelihood that the utility's interests would be overlooked.

not need a hearing because the commission will protect its interests.

But all such assertions miss the essential points that our system never tolerates unrestricted power, that the truth is best hammered out on the anvil of contention before an impartial and objective tribunal, and that until it is tested in the crucible of cross-examination, self-serving testimony can have little weight.

Properly, a state regulatory commission, such as the appellee commission, represents neither the utility nor its customers. It is the body established by law to resolve the inherent conflict between such interests. Consequently, both the utility and its customers are entitled to be heard—to due process—or proceedings before the commission become a farce.

Nor is it an answer to say, as the appellees claimed below, that government would never get its business done in this field if it had to listen to the millions of affected customers. Such a fallacious argument of necessity has had no appeal to this Court in other connections and it should have no appeal now. It is urged that the complexities of modern conditions now require short cut procedures and *ex parte* determinations, but those complexities all the more compel faithful adherence to due process principles if our liberties are to retain any reality or significance.[18] We do not believe that the Constitution should be scuttled in the interest of apparent expediency.

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[18]Mr. Justice Douglas' statement (concluding his dissenting memorandum) in a somewhat different connection in *New York v. United States* (1951), 342 US 882, 884, 96 L ed 662, 663, 72 S Ct 152 is nevertheless apropos: "Unless we make the requirements for administrative action strict and demanding, *expertise*, the strength of modern government, can become a monster which rules with no practical limits on its discretion. Absolute discretion, like corruption, marks the beginning of the end of liberty."

Even assuming that to follow sound constitutional principles would present difficulties of administration, this would constitute a challenge to improve procedures, rather than a basis for denying to the public the protection intended by the Constitution. As a matter of fact, however, the administration of regulatory public utility statutes throughout most of the states and by the federal commissions has not bogged down from any practical difficulties in giving ear to the utility customers as well as to the utility corporations. Representative concepts have been successfully utilized: indeed, municipal representatives have become the principal spokesmen for the customer interests.[19]

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[19]The published opinions of the California Railroad Commission, now called the California Public Utilities Commission, the published opinions of other state regulatory commissions and the records and decisions of the Federal Power Commission show continuing representation of customer interests by cities throughout the United States, in response to extensive notice of pending proceedings and of scheduled hearings.

Moreover, momentous decisions have arisen from actions by municipalities or other public spokesmen, testing the lawfulness of commission decisions, e.g., *Phillips Petroleum Co. v. Wisconsin* (1954), 347 US 672, 98 L ed 1035, 74 S Ct 794, affirming the decision in *State of Wisconsin v. Federal Power Commission*, 205 F 2d 706, where City of Detroit, City of Kansas City and City of Milwaukee were intervenors. Cf. *City of Yonkers v. United States* (1944), 320 US 685, 88 L ed 400, 64 S Ct 327, and *New York v. United States* (1947), 331 US 284, 91 L ed 1492, 67 S Ct 1207. See also *City of Detroit v. Federal Power Commission* (1955), 230 F 2d 810; *City of Hastings v. Federal Power Commission* (1954), 221 F 2d 31; *City of Detroit v. Michigan Public Service Comm.*, 14 NW 2d 784, and *State ex rel City of Sedalia v. Public Utilities Comm.* (Mo. 1918), 204 SW 497.

If this appeal were to be dismissed, and if municipal lawyers were thus to be brought to understand that they assert customer interests by the mere grace of a Commission or of a special statute, it is unlikely that this pattern of effective representation will persist throughout the nation.

Against such a consequence, the federal questions presented are obviously substantial.

3. The effect of the judgment below, that the Commission has the power finally to increase a public utility corporation's charges to its customers by considering the corporation's application and evidence alone, is in direct conflict with this Court's decision in *Wichita Railroad & Light Co. v. Public Utilities Commission* (1922), 260 US

Although Los Angeles, San Francisco, San Diego, Oakland, Long Beach and many other California cities have appeared in utility rate proceedings, over several decades, as spokesmen for utility customers in their areas, no previous instance is known of an assertion by the Commission that these cities or other customers appeared as a matter of grace, and not as a matter of right. Among rate proceedings before the Commission where Los Angeles so appeared were those reported in 53 Cal. PUC 275, 51 Cal. PUC 419, 50 Cal. PUC 247 (where the Commission granted Los Angeles' motion to dismiss an application by The Pacific Telephone and Telegraph Company for rate increases of more than $35,000,000 annually), 48 Cal. PUC 823 and 48 Cal. PUC 1. Indeed, the City of Los Angeles has for many years been an active participant in major utility rate proceedings before the California Commission, where utility charges to it or its residents were in issue. Moreover, the City of Los Angeles has appeared *as a party*, on the Commission's side, to support its orders in rate proceedings before the California Supreme Court as, e.g., in *Southern Counties Gas Company v. Public Utilities Commission*, S.F. No. 18608 (writ denied without opinion July 31, 1952), and in *The Pacific Telephone and Telegraph Company v. Public Utilities Commission* (1950), 34 Cal. 2d 822.

48, 67 L ed 124, 43 S Ct 51, and conflicts in principle with this Court's decisions in many other cases, including *In Re Oliver* (1948), 333 US 257, 92 L ed 682, 68 S Ct 499; *Railroad Commission v. Pacific Gas & Electric Co.* (1938), 302 US 388, 82 L ed 319, 58 S Ct 334; *Ohio Bell Telephone Company v. Public Utilities Commission* (1937), 301 US 292, 81 L ed 1093, 57 S Ct 724; *Morgan v. United States* (1936), 298 US 468, 80 L ed 1288, 56 S Ct. 906; *St. Joseph Stockyard Company v. United States* (1936), 298 US 38, 80 L ed 1033, 56 S Ct 720; *Panama Refining Company v. Ryan* (1935), 293 US 388, 79 L ed 446, 55 S Ct 241; *Southern Railway Company v. Virginia* (1933), 290 US 190, 78 L ed 260, 54 S Ct 148; *Hollis v. Kutz* (1921), 255 US 452, 65 L ed 727, 41 S Ct 371; *Interstate Commerce Commission v. Louisville & Nashville R. Co.* (1913), 227 US 88, 57 L ed 431, 33 S Ct 185; *Smyth v. Ames* (1897), 169 US 466, 42 L ed 819, 18 S Ct 418, and *Covington & L. Turnpike Road Co. v. Sandford* (1896), 164 US 578, 41 L ed 560, 17 S Ct 198.

Conclusion.

The Commission's Decision No. 55936 violates the appellants' rights under the Fourteenth Amendment and is therefore void. Consequently, that decision should have been struck down by the California Supreme Court.

It is respectfully submitted that this Court manifestly has jurisdiction to correct such error below, and that the question presented is substantial.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,

ALAN G. CAMPBELL,
Assistant City Attorney,
Attorneys for the Appellant,
The City of Los Angeles.

ROGER ARNEBERGH,
Appellant in Propria Persona,
400 City Hall,
Los Angeles 12, California.

WALHFRED JACOBSON,
City Attorney,
Attorney for the Appellant,
The City of Long Beach.

WALHFRED JACOBSON,
Appellant in Propria Persona,
600 City Hall,
Long Beach 2, California.

Of Counsel:

LESLIE E. STILL,
Deputy City Attorney,
City of Long Beach,
600 City Hall,
Long Beach 2, California.

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ROGER ARNEBERGH,
City Attorney,

ALAN G. CAMPBELL,
Assistant City Attorney,
Attorneys for the Appellant,
The City of Los Angeles.

ROGER ARNEBERGH,
Appellant in Propria Persona,
400 City Hall,
Los Angeles 12, California.

WALHFRED JACOBSON,
City Attorney,
Attorney for the Appellant,
The City of Long Beach.

WALHFRED JACOBSON,
Appellant in Propria Persona,
600 City Hall,
Long Beach 2, California.

Of Counsel:

LESLIE E. STILL,
Deputy City Attorney,
City of Long Beach,
600 City Hall,
Long Beach 2, California.

APPENDIX B.

Decision No. 55936.

Application No. 39309.

Before the Public Utilities Commission of the State of California.

In the Matter of the Application of The Pacific Telephone and Telegraph Company, a corporation, for authority to increase certain intrastate rates and charges applicable to telephone service furnished within the State of California.

California Water & Telephone Company, a corporation, Complainant, vs. The Pacific Telephone and Telegraph Company, a corporation, Defendant. Case No. 5974.

The Pacific Telephone and Telegraph Company, a corporation, Complainant, vs. General Telephone Company of California, a corporation, California Water & Telephone Company, a corporation, and Sunland-Tujunga Telephone Company, a corporation, Defendants. Case No. 5983.

Appearances are listed in Attachment 1 hereto.

Interim Opinion.

Nature of Proceedings.

By the above-entitled application filed August 7, 1957, The Pacific Telephone and Telegraph Company[1] seeks an order of this Commission authorizing increases in certain intrastate telephone rates and charges sufficient to produce increased revenues of $28,500,000 annually.

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[1]Hereinafter sometimes referred to as Pacific.

Case No. 5974 is a complaint filed by California Water & Telephone Company[2] on August 29, 1957, seeking an order of this Commission directing The Pacific Telephone and Telegraph Company to enter into a particular agreement with California for a division of revenues derived from message toll and multiple message unit traffic interchanged between their respective telephone systems. In its answer, filed September 16, 1957, Pacific stated its refusal to enter into the agreement proposed by California. In substance, Pacific's answer also stated that the remedy for deficient toll compensation lay in the hands of California to negotiate with Pacific and proposed that an agreement covering multi-message unit traffic for the Los Angeles Extended Area be entered into by the four telephone utilities handling multi-message unit traffic in such area.

Case No. 5983 is a complaint filed by The Pacific Telephone and Telegraph Company on September 16, 1957, seeking an order of this Commission directing General Telephone Company of California,[3] California Water & Telephone Company, and Sunland-Tujunga Telephone Company,[4] to enter into an agreement with Pacific for a division of revenues from multi-message unit traffic interchanged between any of the four utilities in the Los Angeles Extended Area. The agreement proposed by Pacific in this case is identical with that which it proposed in Case No. 5974. California's answer, filed September 17, 1957, in substance stated that the issues in this case were those raised by Case No. 5974 and that there is

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[2]Hereinafter sometimes referred to as California.

[3]Hereinafter sometimes referred to as General.

[4]Hereinafter sometimes referred to as Sunland.

no valid reason why all settlement arrangements between California and Pacific may not be determined independently of settlement arrangements between Pacific and any other telephone companies. General's answer, filed September 20, 1957, in substance alleges that Pacific's proposed agreement, under existing rates, is unfair and unreasonable and, under any circumstances, is unworkable. Sunland's answer, filed September 24, 1957, in substance alleges that Pacific's proposed agreement is unfair and unworkable. The answer of both General and Sunland ask that this Commission take jurisdiction over the present disagreements of the parties and establish settlement methods for multi-message unit or ticketed traffic business interchanged between the parties.

Public Hearings and Present Status of Proceedings.

The two complaint cases were consolidated and public hearings thereon held before Commissioner Rex Hardy and Examiner Manley W. Edwards on September 19 and 20, 1957, at Los Angeles, and before Commissioner Hardy on September 26, 1957, at San Francisco.

After due notice, public hearings in the matter of Pacific's application for increased telephone rates were held before Commissioner Matthew J. Dooley and Examiner F. Everett Emerson on September 25, 26 and 27, 1957, at San Francisco. Because of the fact that Pacific's application respecting rates includes a rate proposal pertaining to multi message unit traffic for the Los Angeles Extended Area, as well as for one other extended area in the state, and because of the intimate relationship of the two complaint cases thereto, the Commission reassigned the complaint matters to Commissioner Dooley and Exa er Emerson. All three matters were then consoli-

dated during the hearing on September 27 and the public hearings thereon continued on September 27 and on October 3, 4 and 10, at San Francisco and October 17, 1957, at Los Angeles.

None of the matters are concluded at this point. In the application matter, Pacific has not as yet completed its full showing, cross-examination is to be undertaken, the affirmative presentations of other parties are yet to be heard, and nine additional days of hearing in such matter are now on the Commission's calendar. The complaint cases have been temporarily removed from the calendar but neither case has been finally submitted for decision.

Issues Considered Herein.

At the hearing on September 27, the four companies furnishing service in the Los Angeles Extended Area (within their respective serving areas and jointly, through the interchange of traffic) joined in placing a "motion for interim relief" before the Commission. Such motion, in effect, seeks authorization (1) to reduce the length of mileage steps for extended service, and (2) to increase the multi-message unit rate from 4.25 to 4.3 cents in the Los Angeles Extended Area.

The four companies seek to effectuate such proposal by mutually entering into an agreement, dated September 23, 1957, covering, basically, the division between them of revenues derived from interchanged traffic. The agreement is a conditional one, in three respects. First, the agreement states that it is subject to the approval of this Commission. Second, the agreement would become effective "if and when" each of the four companies is permitted to make the proposed reduction in length of mile-

age steps. Third, the agreement would become effective "if and when," coincident with the change in mileage steps, each of the four companies is permitted to charge message unit rates no less than 4.3 cents per message unit.

The motion for interim relief and the proposed agreement between the four companies are the only issues to be considered and disposed of in this decision. All other matters involved in the three proceedings will be held in abeyance pending final submission of the matters.

Nature of Evidence.

The four companies have been dividing revenues from interchanged traffic in accordance with an agreement between them approved by this Commission in 1954.[5] Among other things, the Commission at that time authorized the rate per message unit presently in effect. The present tariff schedules for multi-message unit service vary between companies. Pacific and General have complete schedules setting forth both the rate and the mileage steps. Sunland's schedule refers to the tariffs of connecting companies, both as to steps and rate. California's filed schedule sets forth the rate and refers to connecting company tariffs as to the mileage steps.

As of June 21, 1957, the prior agreement respecting division of revenues was cancelled by the parties and there is no presently effective agreement covering the division of revenues arising from the interchange of multi-message unit traffic in the Los Angeles Extended Area. While the companies, accounting-wise, seem to be assuming that, pending decision in this matter, settlements

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[5]Agreement dated December 14, 1953, approved by Decision No. 50260 in Case No. 5462, issued July 6, 1954 (53 CPUC 342).

between them will be continued on the basis of the prior agreement, no settlements are in fact being made. Settlements for the interim period between agreements can be no more than conjectural at this time.

The proposed new agreement provides that each company shall receive, out of the revenues arising from interchanged traffic, an amount equal to its expenses in furnishing the service which generates such revenues and that the remainder of the revenues will be divided among the four companies in proportion to the net investment in plant which each company devotes to the interchanged multi-message unit traffic.

Following the methods covered in the prior agreement, except for the use of year-end instead of average net investment, the four companies have recently completed a study of revenues, expenses and net investment based on presently effective rates. The results of such study[6] indicate the following:

LAEA Interchanged MMU Operations
Year 1956—Present Rates

Item	Company				
	California	General	Pacific	Sunland	Total
Settlement					
Revenues	$ 2,326,000	$12,089,000	$16,474,000	$ 247,000	$31,136,000
Expenses	1,956,000	10,655,000	15,239,000	212,000	28,062,000
Balance	$ 370,000	$ 1,434,000	$ 1,235,000	$ 35,000	$ 3,074,000
Net Investment*	$10,726,000	$41,562,000	$35,799,000	$1,008,000	$89,095,000
Settlement Ratio[7]	3.45%	3.45%	3.45%	3.45%	3.45%

*End of year.

[6]Exhibit No. 35.

[7]The *uniformity* of settlement ratios here shown arises from the prior agreement approved in Decision No. 50260 in Case No. 5462.

This study, when adjusted to reflect the mileage-step and rate changes proposed, indicates the following results:[8]

LAEA Interchanged MMU Operations
Year 1956—Proposed Rates and Steps

Item	Company				
	California	General	Pacific	Sunland	Total
Settlement Revenues	$ 3,203,000	$15,506,000	$19,434,000	$ 329,000	$38,472,000
Expenses	2,429,000	12,508,000	16,852,000	256,000	32,045,000
Balance	$ 774,000	$ 2,998,000	$ 2,582,000	$ 73,000	$ 6,427,000
Net Investment*	$10,726,000	$41,562,000	$35,799,000	$1,008,000	$89,095,000
Settlement Ratio[7]	7.21%	7.21%	7.21%	7.21%	7.21%

*End of year.

The showing of the four companies included exhibits and testimony respecting over-all estimated operations for the year 1957 (California intrastate for Pacific and total company for the other three), which may best be summarized by the following tabulation showing results of operations. In each instance, the respective presentations were in support of allegations that the rates of return to be realized during 1957 will be below a fair and reasonable level. Of the four companies, all but Sunland has a rate increase application on file with this Commission.

Results of Operations—Present Rates
Estimated Year 1957

Item	Company			
	California[a]	General[b]	Pacific[c]	Sunland[d]
Operating Revenues	$12,426,072	$ 80,724,000	$ 573,205,000	$ 994,838
Operating Expenses	10,174,928	65,595,000	494,604,000	788,854
Net Revenue	$ 2,251,144	$ 15,129,000	$ 78,601,000	$ 205,984
Net Plant and Working Capital	$43,179,843	$257,040,000	$1,316,902,000	$3,630,000
Per Cent Return	5.21%	5.89%	5.97%	5.67%

[a]Exhibit No. 48.
[b]Exhibit No. 45.
[c]Exhibit No. 13, Table 3.
[d]Exhibit No. 37.

[8]Table 3 of Exhibit No. 35.

As further evidence of the need for increased revenues, California's witness testified that California had a 1957 construction requirement which called for the financing of approximately $16,000,000. In view of anticipated earnings, however, California directors felt that the most that might be raised during 1957 was $13,000,000. California's rate proceeding, it was hoped, would permit of such financing. The witness further stated that, because of delay in receiving rate relief through that proceeding, California's directors have had to cut $3,000,000 from the proposed 1957 financing. Such cutback, according to the witness, has very seriously affected its construction program. Immediate rate relief is imperative if California is to be able to sell its securities at a reasonable price and obtain the funds necessary to complete its 1957 financing, lay a foundation for 1958 financing and to carry out even its presently curtailed construction program, according to the witness.

The testimony of Sunland's witness indicates that Sunland has been and now is faced with substantial plant expansion. In the two-year period ended June 30, 1957, plant investment represented a growth of approximately $1,100,000 or about 40 per cent. For the succeeding year, 1958, construction requirements are about $476,000 additionally. The witness testified that Sunland's current and projected earnings, at the level of present rates, will be insufficient to support financing of the needed construction for which it hopes to sell $366,000 worth of common stock. The construction program hinges upon whether or not immediate rate relief is granted, according to this witness.

Position of Various Parties.

In addition to cross-examining witnesses, various parties made statements of position and presented argument respecting both the merits of the matter and its procedural aspects. These are briefly summarized as follows:

The *City and County of San Francisco* considers that the proposed rate change is long overdue and that the rate for message unit service should be the same throughout the state, as are the rates for toll message service. Specifically, it is urged that the mileage steps and the message unit rate be identical in Los Angeles and San Francisco.

The *City of Los Angeles* urges denial of the motion for interim relief on several grounds. Primarily, this city maintains that procedurally the matters are wholly deficient and that the application and the two cases here under consideration do not provide a proper "vehicle" for determination of the issues. Further, it is maintained that no adequate showing of emergency need has been made, with the possible exception of only one of the companies, and that in the absence of a full showing of urgency the granting of interim relief is unwarranted. If, however, interim rate relief at this time is granted by the Commission, it is urged that the Commission offset the additional message unit revenue which Pacific might receive by appropriate reductions in other basic rates.

The *California Farm Bureau Federation* points out that the revenues derived from a metropolitan area have a direct bearing on the total system-wide service rendered by a utility. If the utilities were to obtain sufficient revenues, farm bureau members might then be able to obtain the particular telephone services desired by them.

A showing that the proposed rates would provide the revenue which the four companies need for their total system operations would be sufficient for the farm bureau to support the proposal. While the farm bureau feels that in the interest of system-wide service the multi-message unit rate proposals here before the Commission are in the public interest, it is urged that if it should develop that any one or all of the four companies would have a higher than reasonable rate of return, the Commission would order lower rates into effect without disturbing the uniformity of the multi-message unit rate structure.

The *City of Long Beach* in written as well as oral argument opposes the granting of the relief sought on two basic grounds. First, it is contended that this Commission lacks jurisdiction to entertain the motion for interim relief insofar as the companies other than Pacific is concerned, or, in other words, the present proceedings do not provide a proper "vehicle" for determination of the issues. Second, it is maintained that none of the companies has sustained the burden of proof that there now exists an emergency financial condition that warrants the granting of interim relief to any of them. It is urged, however, that if such relief is granted for multi-message unit service, exchange services should be simultaneously adjusted downward by an equivalent offsetting amount.

The *Commission Staff* maintains that there is nothing in the statutes or in the Commission's general orders which requires approval of the agreement between the companies as to the division of revenues among them; nor is it essential, in the opinion of staff counsel, that

all four companies have a uniform rate of return on the multi-message unit portion of their business. The staff maintains that an applicant for interim relief must fully carry the burden of showing urgent need, and staff counsel urged that, of the four companies, only California had made any such showing. While uniform multi-message unit rate treatment is desirable in the Los Angeles Extended Area, a uniform rate is not necessarily essential, according to the staff.

Findings and Conclusions.

The Commission finds that procedurally and jurisdictionally the matters treated herein are properly before it and, among others, specifically relies upon the provisions of Sections 701 and 766 of the Public Utilities Code to such effect. In view of the evidence, we find that disposition of the matters now before us by motion for interim relief is both necessary and convenient in the exercise of the Commission's duties and is in the public interest.

With respect to the various motions thus far placed before the Commission during these proceedings, all such motions inconsistent with the findings and conclusions herein made or with the following order are hereby each and severally denied.

The Commission is of the opinion and finds that the interchanged multi-message unit operations of the four companies in the Los Angeles Extended Area are now being conducted at revenue levels which produce returns below those which are fair and reasonable for such services. All four companies have need for and are entitled to increased revenues from such operations and we find the fact so to be. We further find the facts to be that

uniformity of mileage steps and multi-message unit rate in the Los Angeles Extended Area is to the best public interest and that this element of telephone operations should be self-sustaining and, insofar as possible, carry its full and equitable share of the burden of providing revenues. At this point in the proceedings, however, we shall not authorize the full increases sought.

In our opinion the characteristics of multi-message unit service are generally of the same nature as the characteristics of short haul toll service and particularly so as respects mileage steps. Mileage steps for short haul toll schedules were shortened in 1954.[9] We see no reason why mileage steps for multi-message unit service should not be identical with short haul toll mileage steps, and we find that it is now appropriate and reasonable that such be accomplished in the Los Angeles Extended Area. The record does not establish that it is necessary or desirable to increase the present multi-message unit rate of 4.25 cents in the Los Angeles Extended Area on an interim basis. Accordingly, proposed changes in mileage steps will be authorized but the proposed rate change will not. The effect of such authorization, as calculated by the companies, will be as follows:

Mileage Change Only	Increases in Charges to Customers	Increase in Settlement	Increase in Revenues to Company before Uncollectibles
California	$ 790,000	$ 278,000	$ 1,068,000
General	3,125,000	(1,036,000)	2,089,000
Pacific	11,288,000	778,000	12,066,000
Sunland	68,000	(20,000)	48,000
Total	$15,271,000	$ —	$15,271,000
	(Decrease)		

[9]Decision No. 50258 in Application No. 33935, issued July 6, 1954 (53 CPUC 275).

The total increase of $15,271,000 to be authorized is $987,000 less than that sought by the four companies. As compared with the 7.21 per cent settlement ratio sought by the companies, the authorized increases are based upon a 6.98 per cent settlement ratio for interchanged business. However, on total multi-message unit operations, the resulting total ratios will be as follows:[10]

California	—	6.98%
General	—	6.98%
Pacific	—	5.53%
Sunland	—	6.98%
Total Companies' Operation	—	6.00%

The proposed agreement between the four companies should not be approved for the basic reason that the agreement provides that it shall become effective "if and when" each of the four companies is permitted to change mileage steps and to charge no lesser rate than 4.3 cents per message unit. We find these provisions to be unreasonable and improper. The agreement, in its present form, will not be approved. We further find, as hereinabove stated, that it is in the public interest that multi-message unit business, insofar as possible, should be self-supporting and that the rate structure therefor should be maintained at such level as will assure that all reasonable costs of providing the service will be met, plus a fair and reasonable return to each company on the investment devoted by it to such business.

We find that the increased charges which will result from the changed lengths of mileage steps in the Los Angeles Extended Area herein authorized are justified

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[10]From Exhibit No. 46, Table 4.

and that insofar as existing charges in said Area differ therefrom, such charges are for the future unjust and unreasonable.

We find it to be fair and reasonable that Pacific should be the tariff filing utility for Los Angeles Extended Area interchanged multi-message unit traffic and that it is appropriate that the other utilities' tariffs reflect the same by suitable references in the respective schedules. The order herein will implement such desirable tariff-filing situation.

The parties are hereby placed on notice that this is an interim decision and that the Commission retains jurisdiction to modify the same in the final decision which it will render herein should the facts and experience hereunder warrant.

INTERIM ORDER.

The matters herein being properly before the Commission, public hearing thereon having been held and evidence adduced thereat, the Commission having been informed with respect thereto and the matter of interim relief having been submitted, the matters are now ready for decision based upon the evidence and the findings and conclusions contained in the foregoing opinion; therefore,

IT IS HEREBY ORDERED as follows:

1. The Pacific Telephone and Telegraph Company is authorized and directed to file in quadruplicate with this Commission after the effective date of this order, in conformity with the Commission's General Order No. 96,

revised tariff schedules with changes in rates, charges and conditions as set forth in Appendix A attached hereto, and, after not less than five days' notice to this Commission and to the public, to make said revised tariff schedules effective for service furnished on and after January 6, 1958.

2. The General Telephone Company of California is authorized and directed to file in quadruplicate with this Commission after the effective date of this order, in conformity with the Commission's General Order No. 96, revised tariff schedules with changes in rates, charges and conditions as set forth in Appendix B attached hereto, and, after not less than five days' notice to this Commission and to the public, to make said revised tariff schedules effective for service furnished on and after January 6, 1958.

3. California Water & Telephone Company is authorized and directed to file in quadruplicate with this Commission after the effective date of this order, in conformity with the Commission's General Order No. 96, revised tariff schedules with changes in rates, charges and conditions as set forth in Appendix C attached hereto, and, after not less than five days' notice to this Commission and to the public, to make said revised tariff schedules effective for service furnished on and after January 6, 1958.

4. Public hearings in Application No. 39309, Case No. 5974 and Case No. 5983 are continued to such dates,

times and places as may from time to time appear on the Commission's hearing calendar.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 10th day of December, 1957.

Peter E. Mitchell
President

Ray E. Untereiner

Matthew J. Dooley

Rex Hardy

C. Lyn Fox
Commissioners

ATTACHMENT 1

List of Appearances

PRINCIPALS:

Pillsbury, Madison & Sutro, by *Francis N. Marshall* and *Arthur T. George,* for The Pacific Telephone and Telegraph Company, applicant and defendant;

Bacigalupi, Elkus & Salinger, by *Claude N. Rosenberg* and *William Fleckles* for California Water & Telephone Company, interested party, complainant and defendant;

John Robert Jones and *Albert M. Hart,* for General Telephone Company of California, interested party and defendant;

Orrick, Dahlquist, Herrington & Sutcliffe, by *Warren A. Palmer,* and *Alan R. Stacey,* for Sunland-Tujunga Telephone Company, interested party and defendant;

PROTESTANTS:

Telephone Answering System of California, Inc., by *Bert Levy, L. E. Langlois* and *George W. Smith;* Telephone Answering Services of California, Inc., by *Lew Lauria;* City of San Pablo, by *Leland F. Reeves; Carl J. Ellis* in propria persona; Bert Levy in propria persona.

INTERESTED PARTIES:

California Farm Bureau Federation, by *J. J. Deuel, Joseph O. Joynt* and *Bert Buzzini;* City and County of San Francisco, by *Dion R. Holm* and *Paul L. Beck;* City of Los Angeles, by *Roger Arnebergh, Alan G. Campbell, T. M. Chubb* and *Robert W. Russell;* City of Berkeley,

by Fred C. Hutchinson and *Robert T. Anderson;* City of Long Beach, by Walhfred Jacobson, *Leslie E. Still* and *Henry E. Jordan;* City of Oakland, by John W. Collier and *Edward A. Goggins;* City of Richmond, by *Sherrill D. Luke;* City of Sacramento; by *Everett M. Glenn;* City of Sunnyvale, by *Robert P. Berkman;* City of Seaside, by Saul M. Weingarten; City of San Diego, by *Frederick B. Holoboff* and *Aaron W. Reese;* California Independent Telephone Association, by *Neal C. Hasbrook;* Sunkist Growers, Inc., and Exchange Orange Products Company, by *W. D. McKay;* Western California Telephone Company, by Harold O. Davis; E. A. Hosmer & Co., by E. A. Hosmer; San Joaquin County Board of Supervisors, by C. P. Kenyon; International Brotherhood of Electrical Workers, by *O. A. Rieman;* California Nevada Conference of National Electrical Contractors Association, by *W. J. Varley;* City of Pasadena, by *Frank L. Kostlan;* City of Lakewood, by *Carl J. Ellis.*

COMMISSION STAFF:

Mary Moran Pajalich, M. J. Kimball and *John F. Donovan.*

APPENDIX A

RATES

The presently effective rates, charges and conditions of The Pacific Telephone and Telegraph Company are changed as set forth in this appendix.

Schedule No. 6-T

Message Unit Service—Los Angeles Extended Area

Rates (3)(b), Number of Message Units per Initial and Additional Periods:

Where the Air-Line Toll Rate Mileage Between Toll Rate Centers Is[a]		The Number of Message Unit per Initial Period Is	The Initial Period Is	The Number of Units per Additional Period Is	The Additional Period Is
Over	Including				
0 —	8	2 message units	3 minutes	1 message unit	2 minutes
8 —	12	3 message units	3 minutes	1 message unit	1 minute
12 —	16	4 message units	3 minutes	1 message unit	1 minute
16 —	20	5 message units	3 minutes	1 message unit	1 minute
20 —	25	6 message units	3 minutes	2 message units	1 minute
25 —	30	7 message units	3 minutes	2 message units	1 minute
30 —	35	8 message units	3 minutes	2 message units	1 minute
35 —	40	9 message units	3 minutes	3 message units	1 minute
40 —	50	10 message units	3 minutes	3 message units	1 minute
50 —	60	11 message units	3 minutes	3 message units	1 minute

[a]Outside the local service area.

Rates (3)(c), Number of Message Units per Initial Period:

Revise rate to conform with authorized Rates (3)(b) above.

Appendix B

Rates

The presently effective rates, charges, and conditions of the General Telephone Company of California are changed as set forth in this appendix.

Schedule No. H-1
Message Unit Service

Applicability

Applicable in connection with extended service and Los Angeles foreign exchange service.

Territory

Within the exchange areas of the Covina, Downey, Long Beach, Malibu, Redondo, Santa Monica, West Los Angeles and Whittier exchanges as said areas are defined on maps filed as part of the tariff schedules.

Rates — *Rate per Month*

(1) Flat Rates and Message Rates:
Primary and extension stations — As set forth in Extended Service Schedules.

(2) Message Unit Rate:

(a) All routes except between Malibu and West Los Angeles Exchanges:

The message unit rate is in accordance with the message unit service tariff provisions of the connecting company.

(b) Between Malibu and West Los Angeles Exchange:

	Rate per Unit
1. Semi-public, public telephone, foreign exchange and hotel P.B.X. service	$0.05
2. Other services	.0425

(3) Number of Message Units:

(a) All routes except between Malibu and West Los Angeles Exchanges

The number of message units applicable to a message is in accordance with the message unit service tariff provisions of the connecting company.

(b) Between Malibu and West Los Angeles Exchanges:

Route		The Number of Message Units per Initial Period Is	The Initial Period Is	The Number of Units per Overtime Period Is	The Overtime Period Is
Between	And				
Malibu D.A.	West Los Angeles	2 message Units	3 minutes	1 Message Unit	2 minutes
Zuma D.A.	West Los Angeles	4 message Units	3 minutes	1 Message Unit	1 minute

D.A.—District Area

Special Condition:

Appendix C

Rates

The presently effective rates, charges, and conditions of the California Water & Telephone Company are changed as set forth in this appendix.

Schedule No. H-1

Message Unit Service

Applicability

Applicable in connection with business individual, two-party and suburban line, residence individual, two-party, four-party and suburban line, commercial and hotel private branch exchange, business and residence key system, semi-public and public telephone, and Los Angeles and extended foreign exchange services.

Territory

Within the following listed exchange areas, as said areas are defined on maps filed as part of the tariff schedules:

Monrovia San Fernando Sierre Madre

Rates, Rules and Conditions

Rates, rules and conditions for Message Unit Service from Monrovia, San Fernando, and Sierre Madre exchanges to other exchanges and district areas of the Los Angeles Extended Area are in accordance with the rates, rules and conditions applicable to Message Unit Service contained in tariff schedules of the connecting company.

APPENDIX C.

BEFORE THE

Public Utilities Commission of the State of California

Application No. 39309

In the Matter of the Application of THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY a corporation, for authority to increase certain intrastate rates and charges applicable to telephone service furnished within the State of California.

Case No. 5974

CALIFORNIA WATER & TELEPHONE COMPANY, a corporation,
Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,
Defendant.

Case No. 5983

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,
Complainant,

vs.

GENERAL TELEPHONE COMPANY OF CALIFORNIA, a corporation, CALIFORNIA WATER & TELEPHONE COMPANY, a corporation, and SUNLAND-TUJUNGA TELEPHONE COMPANY, a corporation,
Defendants.

Petition for Rehearing, Following the Commission's Decision No. 55936, of the Matters Comprehended by That Decision.

To the Honorable, the Public Utilities Commission of the State of California:

The City of Los Angeles, a municipal corporation, and Roger Arnebergh, as a subscriber of The Pacific Telephone and Telegraph Company, interested parties herein, respectfully petition:

I. That a rehearing be granted herein for the purpose of reconsidering the matters comprehended by the

Commission's Decision No. 55936, and for the purpose, upon such rehearing and reconsideration, of setting such decision wholly aside; and

II. That a rehearing be granted herein and that coincidentally with such grant of a rehearing the Commission vacate and set wholly aside its Decision No. 55936.

This petition is made upon the grounds here shortly stated, and upon the grounds hereafter more fully set forth:

(1) This Commission was and is without jurisdiction, power or authority to grant or authorize increases in subscribers' telephone rates as provided by Decision No. 55936, or to grant or authorize any other increases in subscribers' telephone rates, without completing a full hearing and investigation of the affairs and operations of the telephone companies involved.

(2) It has not been made to appear to the Commission that The Pacific Telephone and Telegraph Company ("Pacific") is in a precarious financial condition, or that any emergency requires that its revenues or earnings be increased by an interim order before the completion of a full hearing and investigation into Pacific's affairs. On the contrary, Exhibit 31, Chapter 4, Table B, shows that as of December 31, 1956, the company had an unappropriated earned surplus of $87,387,322.40. The record further shows that present earnings under existing rates are more than adequate to meet all expenses, including payment of dividends to stockholders at current rates, and, in addition, add substantially to such surpluses.

(3) Similarly, it has not been made to appear to the Commission that General Telephone Company of California ("General"), California Water & Telephone Company ("California") or Sunland-Tujunga Telephone

Company ("Sunland"), is in a precarious financial condition or that any other emergency requires that its revenues or earnings be increased by an interim order, without the completion of a full hearing and investigation by the Commission of its affairs.

Consequently, this Commission was and is without jurisdiction, power or authority to make the findings or orders with respect to those telephone corporations which are provided by its Decision No. 55936, by interim order.

(4) Until the Commission has held a full hearing, and after such hearing has found that the rates charged are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the Commission is without jurisdiction, power, or authority to determine and fix, by order, the just, reasonable, or sufficient rate, and such hearing must include:

(a) a full and complete presentation of evidence by the company or companies applying for such increase, which evidence, if not controverted, disproved, or discredited, would require an increase in rates;

(b) a full opportunity to the public, representatives of municipalities and other interested parties to cross-examine applicant's witnesses;

(c) an opportunity for the presentation of testimony and other evidence by the public, by representatives of municipalities, and other interested parties. Further, established practice has set the precedent of having a presentation made by the Commission's own staff, and it would be an abuse of discretion for the Commission to grant an increase in rates without first providing for a presentation of evidence by such staff, which is supported and paid for by the public for such purpose, among others.

(5) The Commission is without jurisdiction, power or authority to make the findings or orders provided by its Decision No. 55936, by interim order.

(6) The increases in rates to telephone subscribers authorized by Decision No. 55936 are applicable solely in the Los Angeles extended area. There was received in evidence in this consolidated proceeding Exhibit No. 63. Attached hereto, marked Exhibit "A", and by such reference made a part hereof, is a copy of Table 2 of such Exhibit 63. From evidence offered to the Commission by Pacific before the rendition of such decision on December 10, 1957, it appeared that in the first six months of 1957:

(a) under present rates Pacific earned no less than 5.92% from its total intrastate operations;

(b) although Pacific seeks rate increases to increase its total intrastate revenues by nearly $40,000,000 in order that its earnings therefrom will be at the rate of 6.91%. its earnings from its exchange operations within the Los Angeles extended area under present rates now exceed this rate of 6.91%.

(c) Based on Pacific's actual operations during the first six months of 1957 its additional revenues solely from the increased rates authorized in the Los Angeles extended area would enable it to increase its earnings from total intrastate operations to 6.33%, by increases in its earnings from its exchange operations in the Los Angeles extended area from a minimum of 7.01% to at least 8.23%.

The imposition upon the telephone subscribers in the Los Angeles extended area of such an unwarranted and unjustified burden is unreasonable, inequitable, discriminatory and unfair and on such account the Commission

was and is without jurisdiction, power or authority to make the orders provided by Decision No. 55936, and such decision is unlawful.

Bases of Petition.

This petition is based upon all of the files and records in the three above-entitled and numbered proceedings; upon all of the files and records in the proceeding upon the application, No. A-38685, of California Water & Telephone Company for an increase in its rates; upon all of the files and records in the proceeding upon the application, No. A-39465, of General Telephone Company of California for an increase in its rates; upon the transcript of all of the hearings had in those two latter proceedings and in the three above-entitled and numbered proceedings; upon all of the exhibits identified in each of those five proceedings; and upon the Commission's Decision No. 55936.

Additionally, this petition is based upon the Commission's General Orders; upon the Commission's Rules of Procedure; and upon the Commission's prior practices and decisions in connection with motions for increased utility rates by interim order. Finally, this petition is based upon the 14th Amendment to the Constitution of the United States; upon the Constitution of the State of California; and upon the statutes made and provided by the Legislature of the State of California.

Grounds of Petition.

As a more extensive statement of the grounds of this petition it is respectfully shown as follows:

(1) By Decision No. 55936 the Commission granted and authorized increases in the rates charged to telephone subscribers for extended area telephone calls by Pacific,

General, California and Sunland. Such increases in rates were effected by the Commission's authorization to those companies to decrease the mileage steps which provide the basis for multi-message unit charges for extended area telephone calls between subscribers within the Los Angeles extended area. Such decision was issued by the Commission in the above-named three proceedings, consolidated for hearing before the Commission.

Decision No. 55936 constitutes the Commission's determination of a motion made by those four telephone corporations in such consolidated proceeding.

There were presented to the Commission in that consolidated proceeding issues as to the proper level of the earnings and rates of Pacific throughout the State of California, but there were *not* before the Commission in that consolidated proceeding any issues or evidence as to the proper level of the earnings and rates of the other three named telephone corporations, either within the Los Angeles extended area or throughout the State of California.

At the time the said motion was made, on September 27, 1957, and to the time the said motion was submitted for decision (over the express objections of your petitioners) on October 14, 1957, there were not before the Commission, in such consolidated hearing or at all, any issues raised by any application or complaint as to the level of the earnings or rates of the Sunland-Tujunga Telephone Company.

There was then pending in the proceeding upon the application of California Water & Telephone Company, No. A-38085, issues as to the proper level of earnings and rates of that telephone corporation, but the said pro-

ceeding was not at the time before the Commission for hearing or determination.

There was then pending in the proceeding upon the application of General Telephone Company of California, No. A-39465, issues as to the proper level of the earnings and rates of that telephone corporation, but the said proceeding was not at the time before the Commission for hearing or determination, nor has there yet been any hearing in that proceeding.

Not only were there no issues as to the proper level of earnings or rates of the said three telephone corporations properly before the Commission when such motion by the four telephone companies was made, but *no notice* had been given to this petitioner or to other municipal corporations, within the Los Angeles extended area, or elsewhere in California, or to the public, that any proposal for increases in the rates of those three telephone corporations would be submitted to or considered by the Commission in connection with the said consolidated hearing on September 27, 1957.

Neither on September 27, 1957 when such motion was made, nor on October 14, 1957 when such motion was submitted, nor on December 10, 1957 when such motion was determined by Decision No. 55936, had any of the four named telephone corporations completed any showing in this consolidated proceeding of deficient earnings under its present rates, nor had the Commission staff completed or shown its investigation or evidence in such regard therein, nor had the Commission otherwise completed its own investigation, nor had cross-examination been completed, nor had there been any opportunity for the presentation to the Commission of evidence by the

public, by representatives of municipalities, or by other interested parties.

The Commission was and is without jurisdiction, power or authority to grant or authorize increases in subscribers' telephone rates as provided by Decision No. 55936, or to grant or authorize any other increases in subscribers' telephone rates, without completing a full hearing and investigation of the affairs and operations of the telephone companies involved.

(2) In the above-entitled and numbered proceedings, consolidated, it has been made to appear to the Commission, from evidence offered by The Pacific Telephone and Telegraph Company, the applicant in No. A-39309, and prior to December 10, 1957, when the Commission issued its Decision No. 55936, that:

(a) Pacific's annual dollar earnings are currently higher than they have ever been before;

(b) Pacific's annual dollar earnings are more than sufficient, after the payment of all necessary wages, salaries and other operating expenses, after the payment of all interest charges upon Pacific's bonds, notes and other obligations, after the payment of all taxes, fees and similar charges against Pacific's properties and operations, and after the payment to the United States and to the State of California of all taxes upon Pacific's profits, to provide for maximum dividends upon Pacific's preferred stock, to provide for dividends of $7.00 a year upon each share of Pacific's common stock and, in addition to add substantially to Pacific's earned surplus.

(3) Under any circumstances that could be found in the record before it, the Commission was without jurisdiction, power or authority to increase the total charges to be paid by subscribers in the Los Angeles extended area by more than $15,000,000. The rate increases purported to be authorized under Decision No. 55936, will increase Pacific's earnings from its exchange operations in the Los Angeles extended area to a rate greatly exceeding its overall rate of earnings in California. In fact, earnings from its exchange operations in the Los Angeles extended area, under the rates purportedly authorized by said interim order would be several times higher than its earnings in many other areas and localities in California. To attempt to foist upon the ratepayers of the Los Angeles extended area an interim increase, at a time when the present earnings in such area already produce an excessive rate of return—earnings so high as to make Pacific's statewide average earnings adequate to cover all expenses, pay dividends to stockholders at established rates, and add substantial amounts to unappropriated earned surplus which already is in excess of $87,000,000—is such a palpable abuse of discretion as to be clearly unreasonable and improper, and, therefore, beyond the jurisdiction, power or authority of the Commission.

ARGUMENT.

POINT I.

Constitutional Due Process and Basic Concepts of Justice and Equity Require That There Be a Complete Hearing of the Issues Involved, Upon Adequate Notice to the Public, and With a Full Opportunity to Be Heard, as a Condition Precedent to Any Substantial Increase in Telephone Rates.

Under modern conditions telephone service has become an absolute necessity to industry, to wholesale and retail consumers, to governmental and other public service operations, and to many individual residents of the community.

A telephone subscriber must deal with the telephone corporation serving his area, or be denied any telephone service whatever. He is entitled, therefore, to the service he needs at fair and reasonable charges.

Existing charges are presumed to be fair and reasonable to the serving telephone corporation until it be demonstrated and found in the manner provided by law that such rates are insufficient to enable an efficiently operated company to earn a reasonable rate of return on the investment necessarily dedicated to providing the telephone service.

An increase in charges to telephone subscribers without such a finding and determination effectively deprives them of their property without due process of law.

Due process of law, under the 14th Amendment and according to historical concepts of ordinary justice and equity, require that issues be framed in a proper proceeding; that due and adequate notice of hearings be given, that witnesses be publicly examined; that those who would

be adversely affected have a full opportunity for cross-examination; that there be an adequate opportunity to prepare and present material, competent and relevant evidence. But due process of law was not followed before the issuance of Decision No. 55936, purporting to authorize the interim increase. Consequently, if such increase is permitted to go into effect, all ratepayers in the Los Angeles extended area will be unconstitutionally deprived of property without due process of law!

The matter involved is by no means either technical or unsubstantial. The record shows that the increases authorized by the Commission amount to approximately one quarter of the present total revenues from multi-message unit services in the Los Angeles extended area. Obviously, this means that the charges to the average subscriber on such account will be increased by approximately 25%.

The City of Los Angeles proposed in the limited hearings held that there be a detailed showing of the effect of the increases proposed upon typical bills. The facts in that regard should have been fully established, but our proposal was rejected.

Even in the absence of detailed evidence however, it is clear that the Commission's decision will have a heavy impact not only upon the average residential subscriber in the Los Angeles extended area, but upon all industrial and commercial operations within the Los Angeles extended area.

One has only to consider the volumes of extended area calls passing through the switchboards of insurance companies and agencies, of department stores and other retail operations, of nearly every conceivable type of in-

dustrial and commercial activity, to appreciate the heavy cost of the authorized increases to the business community in Los Angeles. The increase would likewise be oppressive and a great hardship on the average residential subscriber, especially in view of the fact that the Los Angeles extended area embraces the area occupied by a great metropolis with social and economic unity.

In view of the fact that earnings from Pacific's exchange operations in the Los Angeles extended area are already higher than its earnings in the rest of the State any increases in Pacific's multi-message unit revenues in this area, if authorized at all, should be accompanied by correlative decreases in basic monthly station charges to subscribers in this area. The charge for telephone service should not be increased. Yet no corresponding reduction was made in the Commission's order.

Even if a full hearing had been held prior to the Commission rendering a decision authorizing a rate increase such as that authorized by the interim decision, there would still have been unlawful discrimination.

The accomplishment of such a discriminatory result without a full and adequate hearing effectively deprives the affected subscribers of their property without due process of law, by compelling them to pay excessive and exorbitant telephone rates without having a fair opportunity to be heard.

POINT II.

The Statute Which Creates and Defines the Commission's Powers With Respect to the Rates of Telephone Corporations Contemplates and Requires That a Full Hearing Be Had in Accordance With Constitutional Principles.

Despite the vigorous assertions by Los Angeles and Long Beach that the four companies' motion for an interim increase should not be even entertained, the Commission has proceeded to an affirmative decision thereon in defiance of the will of the Legislature and in disregard of the Commission's own General Orders and Rules of Procedure.

Those two cities pointed out to the Commission, not once but several times, that there was no procedural vehicle before the Commission to support the order proposed by the motion.

The Commission was reminded that the issues necessary to justify such an interim increase were not even properly before the Commission for consideration, and that *the public had no notice* of proposals before the Commission for increases in rates by General, California and Sunland.

Moreover, the public had received no notice whatever of any proposal for rate increases by interim order. The public was entitled to assume that the law would be followed and that the Commission would complete its own investigation, would receive and consider detailed reports from its own staff, and would provide an opportunity to the public to be heard, before it would increase telephone charges to the public.

The Commission's findings suggest that the Commission is of the opinion that it is empowered to raise public utility rates without any hearing at all, other than that necessary to enable the utilities to present their side of the matter. It is our opinion that if the Commission entertains such a motion, it misreads both the intent and the letter of the powers granted it by the people's elected representatives in the legislature.

The Commission points in its decision to Sections 701 and 766 of the Public Utilities Code.

By the reference to Section 701 one might suppose that the Commission considers that its powers extend to whatever it finds convenient to do. Nothing could be further from the truth.

Section 766 by its title which limits its scope, pertains to "Authority to order physical connections between telephone, etc., lines: Cost of connections." Even the limited power granted the Commission by such section expressly requires a "hearing" before the Commission may act. The section specifically requires a further hearing before the Commission can direct a division of joint revenues between telephone corporations. Nothing in such section even purports to grant to the Commission any power to increase rates to subscribers, or to act without a hearing.

There was no issue in this consolidated proceeding as to the Commission's ordering physical connections between telephone lines, nor did the Commission by its interim order attempt to direct the division of revenues among the four telephone corporations involved.

Section 701 is merely a general section granting powers to the Commission. But such powers must be exercised pursuant to law!

It cannot be that the Commission points to Section 766, with its specific requirement for hearings and further hearings as any authority for the proposition that the Commission can authorize increased telephone rates without a hearing. It cannot be that the Commission thus recognizes that it cannot divide the receipts of telephone companies among such companies except after a hearing and a further hearing, but nevertheless, contends that such section impliedly gives it the power to assess charges against the public without a proper hearing.

Section 728, which pertains to the "fixing of rates by commission" expressly requires a "hearing" before the Commission acts.

Conclusion.

The Commission has grossly erred in purporting to authorize an interim increase of rates in the Los Angeles extended area by its Decision No. 55936. That decision is wholly beyond the Commission's power and is wholly invalid: it affronts the 14th Amendment, the Constitution of California and the expressed legislative will of the people.

The Commission's powers are granted by the people of California and it is responsible to them to recognize the limits fixed upon those powers by the people. The requirement that there be a full hearing before the people can be assessed increased utility rates is one of the most fundamental and elementary conditions to the exercise of any of those powers.

The Commission should acknowledge the invalidity of its Decision No. 55936. It should promptly grant a rehearing on the matter. Likewise, it should forthwith set aside that decision. It should thereafter proceed in a law-

ful manner to a full consideration of such proposals for increased telephone rates as may be properly brought before it.

Dated this 19th day of December, 1957.

Respectfully submitted,

ROGER ARNEBERGH

Roger Arnebergh, City Attorney of the City of Los Angeles, an interested party

and

ROGER ARNEBERGH

Roger Arnebergh, a subscriber of The Pacific Telephone and Telegraph Company, an interested party

EXHIBIT "A"

State of California

SUMMARY OF RESULTS OF INTRASTATE OPERATIONS

First Six Months of 1957 (Annualized)
(Based on January thru June 1957 Actual Results)
1954 COMMISSION DECISION BASIS
(Thousands of Dollars)

TABLE 2
(Companion Table to Revised Table 4 of Exhibit 13, App. 39309)
Exhibit No.: 63
Witness: R. M. Cunningham
Date: 12-5-57

	Intrastate Operations	Intrastate Toll Operations	Exchange Operations					
			Total	S.F.-E.B. Ext'd Area	L.A. Ext'd Area	S.D. Ext'd Area	Remaining Exchanges No. Cal.	Remaining Exchanges So. Cal.
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A. GOING LEVEL (Exhibit 13, Revised Table 4, Item C)								
1. Revenues	$ 572,252	$135,976	$ 436,276	$128,566	$201,809	$20,622	$ 63,229	$22,050
2. Expenses and Taxes	494,331	122,202	372,129	106,262	170,535	18,260	56,862	20,210
3. Balance Net Revenues	77,921	13,774	64,147	22,304	31,274	2,362	6,367	1,840
4. Average Net Plant and Working Capital	1,317,026	224,447	1,092,579	299,139	445,958	55,463	221,723	70,296
5. Percent Return	5.92%	6.14%	5.87%	7.46%	7.01%	4.26%	2.87%	2.62%
B. EFFECT OF RECASTING—Amendment to Appl. 39309								
6. Revenues	—	—	—	—	—	—	—	—
7. Expenses and Taxes	5,478	1,560	3,918	1,724	1,725	191	34	244
8. Balance Net Revenues	(5,478)	(1,560)	(3,918)	(1,724)	(1,725)	(191)	(34)	(244)
9. Average Net Plant and Working Capital	(286)	(4)	(282)	(431)	(75)	(11)	263	(28)
C. MODIFIED GOING LEVEL (A & B)								
10. Revenues	572,252	135,976	436,276	128,566	201,809	20,622	63,229	22,050
11. Expenses and Taxes	499,809	123,762	376,047	107,986	172,260	18,451	56,896	20,454
12. Balance Net Revenues	72,443	12,214	60,229	20,580	29,549	2,171	6,333	1,596
13. Average Net Plant and Working Capital	1,316,740	224,443	1,092,297	298,708	445,883	55,452	221,986	70,268
14. Percent Return	5.50%	5.44%	5.51%	6.89%	6.63%	3.92%	2.85%	2.27%
D. PROPOSED RATES—Amendment to Appl. 39309								
15. Revenues	11,959	1,887	10,072	2,539	4,703	525	1,770	535
16. Expenses and Taxes	6,513	1,028	5,485	1,383	2,561	286	964	291
17. Balance Net Revenues	5,446	859	4,587	1,156	2,142	239	806	244
18. Average Net Plant and Working Capital	—	—	—	—	—	—	—	—
E. INCLUDING EFFECT OF PROPOSED RATES (C & D)								
19. Revenues	584,211	137,863	446,348	131,105	206,512	21,147	64,999	22,585
20. Expenses and Taxes	506,322	124,790	381,532	109,369	174,821	18,737	57,860	20,745
21. Balance Net Revenues	77,889	13,073	64,816	21,736	31,691	2,410	7,139	1,840
22. Average Net Plant and Working Capital	1,316,740	224,443	1,092,297	298,708	445,883	55,452	221,986	70,268
23. Percent Return	5.92%	5.82%	5.93%	7.28%	7.11%	4.35%	3.22%	2.62%
F. EFFECT OF PROPOSED RATES (Ex. 13, Revised Table 4 Item D)								
24. Revenues	28,641	5,160	23,481	5,509	16,065	380	1,097	430
25. Expenses and Taxes	15,599	2,811	12,788	3,001	8,749	207	597	234
26. Balance Net Revenues	13,042	2,349	10,693	2,508	7,316	173	500	196
27. Average Net Plant and Working Capital	—	—	—	—	—	—	—	—
G. INCLUDING EFFECT OF PROPOSED RATES AS AMENDED (E & F)								
28. Revenues	612,852	143,023	469,829	136,614	222,577	21,527	66,096	23,015
29. Expenses and Taxes	521,921	127,601	394,320	112,370	183,570	18,944	58,457	20,979
30. Balance Net Revenue	90,931	15,422	75,509	24,244	39,007	2,583	7,639	2,036
31. Average Net Plant and Working Capital	1,316,740	224,443	1,092,297	298,708	445,883	55,452	221,986	70,268
32. Percent Return	6.91%	6.87%	6.91%	8.12%	8.75%	4.66%	3.44%	2.90%

( ) Indicates Inverse Amount

Certificate of Service.

I Hereby Certify that on December 19, 1957, I served a copy of the Petition for Rehearing of the City of Los Angeles on each of the parties to this proceeding, and on each of the parties, not otherwise served, in the proceeding upon Application No. 38685, of the California Water & Telephone Company for a general rate increase, by mailing a copy thereof to each such party or to his attorney of record as hereafter listed.

Francis N. Marshall, Esq.
Arthur T. George, Esq.
Pillsbury, Madison & Sutro
225 Bush Street
San Francisco 4, California

Leland F. Reaves, City Attorney
City Hall
San Pablo, California

L. E. Langlois
785 Market Street
San Francisco, California

Bert Levy
508—16th Street
Oakland 12, California

J. J. Deuel and
Bert Buzzini
2223 Fulton Street
Berkeley 4, California

Dion R. Holm, City Attorney
Paul L. Beck, Chief Valuation and Rate Engineer
206 City Hall
San Francisco 2, California

Fred C. Hutchinson, City Attorney
Robert T. Anderson, Assistant City Attorney
Hall of Justice
Berkeley, California

Henry E. Jordan, Chief Engineer-Secretary
Bureau of Franchises and Public Utilities
Room 103 City Hall
Long Beach 2, California

John W. Collier, City Attorney
Edward A. Goggin, Deputy City Attorney
503 City Hall
Oakland, California

Sherrill D. Luke, Administrative Assistant to the City Manager
City Hall
Richmond, California

Robert P. Berkman
275 S. Murphy Avenue
Sunnyvale, California

Everett M. Glenn, City Attorney
307 City Hall
Sacramento, California

Neal C. Hasbrook
760 Market Street
San Francisco, California

Harold O. Davis, Vice President and General Manager
Western California Telephone Company
15 Montebello Way
Los Gatos, California

Saul M. Weingarten, City Attorney
708 Del Monte Boulevard
Seaside, California

E. A. Hosmer
E. A. Hosmer & Company
Kenwood, California

C. P. Kenyon, Executive Secretary
San Joaquin County Board of Supervisors
Stockton, California

Mary Moran Pajalich,
M. J. Kimball and John F. Donovan
Public Utilities Commission Staff
State Building—Civic Center
San Francisco 2, California

Lew Lauria
6087 Sunset Boulevard
Hollywood 28, California

O. A. Rieman
910 Central Tower
703 Market Street
San Francisco, California

W. J. Varley
1139 Mission Street
San Francisco, California

Aaron W. Reese, Assistant City Attorney
Frederick B. Holoboff, Deputy City Attorney
Civic Center
San Diego, California

Frank L. Kostlan, City Attorney
202 City Hall
Pasadena 1, California

Warren A. Palmer, Esq.
Orrick, Dahlquist, Herrington and Sutcliffe
405 Montgomery Street
San Francisco, California

Claude N. Rosenberg, Esq.
William Fleckles, Esq.
Bacigalupi, Elkus and Salinger
300 Montgomery Street
San Francisco, California

John Robert Jones, Esq.
Albert M. Hart, Esq.
2020 Santa Monica Boulevard
Santa Monica, California

Allan R. Stacey
8000 Foothill Boulevard
Sunland, California

Edward M. Berol, Esq.
Bruce R. Geernaert, Esq.
Berol & Silver
100 Bush Street
San Francisco 4, California

Malcolm D. Miller
General Services Administration
18th and "F" Streets, N. W.
Washington 25, D. C.

Clarence W. Hull, Regional Counsel
49 Fourth Street
San Francisco, California

Bruce McKnight
American Trust Building
Stockton, California

B. M. McCormick, President
6829 Rugby
Huntington Park, California

Walhfred Jacobson, City Attorney
Leslie E. Still, Deputy City Attorney
600 City Hall
Long Beach, California

W. D. MacKay
Commercial Utility Service
111 West 5th Street
Los Angeles 13, California

George W. Smith
202 North Rose
Compton, California

Carl J. Ellis
5218 Bellflower Boulevard
Lakewood, California

Dated at Los Angeles, California this 19th day of December, 1957.

E. B. HARLIN
E. B. Harlin

APPENDIX D.

BEFORE THE

Public Utilities Commission of the State of California

Application No. 39309

In the Matter of the Application of THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, for authority to increase certain intrastate rates and charges applicable to telephone service furnished within the State of California.

Case No. 5974

CALIFORNIA WATER & TELEPHONE COMPANY, a corporation,
Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,
Defendant.

Case No. 5983

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,
Complainant,

vs.

GENERAL TELEPHONE COMPANY OF CALIFORNIA, a corporation, CALIFORNIA WATER & TELEPHONE COMPANY, a corporation, and SUNLAND-TUJUNGA TELEPHONE COMPANY, a corporation,
Defendants.

Joint Petition for a Rehearing by City of Long Beach; and by D. Patrick Ahern, John F. Baker, William T. Dalessi, Gerald Desmond, Charles Dooley, Charles M. Garrison, Walhfred Jacobson, Ray C. Kealer, Lewis D. Reese and Virgil H. Spongberg, as Ratepayers and Individuals.

Pursuant to the provisions of Sections 1731-1736 of the California Public Utilities Code, the City of Long Beach, and D. Patrick Ahern, John F. Baker, William

T. Dalessi, Gerald Desmond, Charles Dooley, Charles M. Garrison, Walhfred Jacobson, Ray C. Kealer, Lewis D. Reese and Virgil H. Spongberg, as ratepayers and individuals, appearing *in propria persona*, all interested parties in this consolidated proceeding, respectfully apply to the Commission for a rehearing herein as to the matters determined by the Interim Opinion and Interim Order contained in Decision No. 55936, dated December 10, 1957, and your Petitioners respectfully submit that said Decision No. 55936 and the Interim Order contained therein are erroneous and unlawful for the reasons and on the grounds hereinafter specified.

Grounds Upon Which Petitioners Consider Decision No. 55936 to Be Unlawful.

1. The Commission acted without authority and lacked jurisdiction to issue its interim order contained in Decision No. 55936 resulting in changes in mileage steps and increases in charges to the customers of the four companies serving the Los Angeles Extended Area insofar as said order affects the companies other than Pacific, as no issue pertaining to a rate increase has been raised in this consolidated proceeding by any company except Pacific.

2. The Commission lacked jurisdiction and acted without authority in making its interim order contained in Decision No. 55936 in the absence of a full-scale hearing on the operations of all four companies in connection with applications by all for rate increases.

3. The Commission's action in issuing Decision No. 55936 was unreasonable, arbitrary, discriminatory and an abuse of discretion in finding and determining, without conducting a full and complete hearing in this consoli-

dated proceeding and on the meager showings made, that the four companies are now conducting their interchanged multi-message unit operations at revenue levels producing returns below those which are fair and reasonable for such services, and that such revenue levels should be increased immediately.

4. The Commission acted without authority and lacked jurisdiction to issue said Decision No. 55936 for the reason that none of the four companies sustained their burden of proof that there now exists an emergency resulting from the financial position of any one of the utilities, and therefore there was no legal basis for the interim order.

5. That said Decision No. 55936 is violative of that portion of Section 1 of the 14th Amendment to the United States Constitution which reads as follows:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

and is violative of Article I, Section 13, Clause 6 of the Constitution of the State of California, which reads as follows:

> "No person shall * * * nor be deprived of life, liberty, or property without due process of law; * * *"

Argument in Support of Rehearing.

1. By its Application No. 39309 Pacific seeks authority to increase certain intrastate rates and charges and in the proceedings on said application Pacific is entitled, from the procedural point of view, to seek an interim order for rate relief, subject to bearing the burden of

proof in that respect. Two complaint cases were consolidated with Pacific's application and these two cases involved a settlement agreement to which Pacific was a party. The parties involved in these cases were California, General, Sunland-Tujunga and Pacific. During its rate increase proceeding Pacific filed a motion for interim rate relief and this motion was joined in by the other three companies. Almost immediately, and without adequate notice being given to numerous affected ratepayers, including your Petitioners, hearings were held by the Commission on said motion in San Francisco. At the time said motion was made California had an application for a rate increase then pending, but it was not consolidated with the Pacific application. Neither General nor Sunland-Tujunga had an application for a rate increase on file at the time said motion was filed with the Commission. General subsequently filed an application for a rate increase, but its application has never been consolidated with Pacific's application and no hearing has yet been had. Sunland-Tujunga has not as yet filed an application for a rate increase, according to our information. Consequently, there is a procedural deficiency here in that no issue has been raised by any of the companies by way of an application in this proceeding for a rate increase except by Pacific.

2. In this consolidated proceeding only Pacific, of the four companies affected by this interim rate relief order, has made more than a token or summary showing. The other three companies have made only a token showing by way of a brief statement as to results of operations for 1957. The motion was taken under submission without adequate notice to the ratepayers of the areas served in the Los Angeles Extended Area by the three com-

panies, without adequate opportunity to cross-examine the witnesses of all four companies testifying in support of the motion, and without an opportunity for the Commission's staff or other interested parties to have sufficient time to present evidence in opposition to said motion. The claims of utilities of the penalties of regulatory lag do not justify the ignoring of rights of the ratepayers, either legally or morally.

3. General, California and Sunland-Tujunga find themselves involved in Pacific's rate increase proceedings by reason of a disagreement as to their four-party settlement agreement, and the resulting consolidation of the two complaint cases. Attached to the motion for interim rate relief was a copy of the proposed new settlement agreement. The effectiveness of the proposed new agreement was conditioned upon (a) its approval by the Commission, (b) reduction by each of the four companies of their mileage steps, and (c) increase in message unit charges at rates no less than 4.3 cents per message unit by each company. Decision No. 55936 specifically authorized only the reduction in mileage steps by each company, and accordingly the agreement will not become effective. The old settlement agreement has expired and there was testimony that no settlements were being made as of October 3 and 4, 1957. Thus, it would appear that the reason for making the interim rate order will not be justified as immediate benefit to the companies is questionable in the absence of any settlements.

The action of the Commission in making a finding that the four companies are now conducting their interchanged multi-message unit operations "at revenue levels which produce returns below those which are fair and reasonable for such services" when there has not been

an adequate opportunity to cross-examine the witnesses on whose testimony and evidence such a finding was based and when there has not been an adequate opportunity to present evidence in opposition thereto appears to be unreasonable, arbitrary and an abuse of discretion. With respect to the position of Sunland-Tujunga it does not appear that any additional evidence will necessarily be presented by it in support of such finding, nor will there be any opportunity to cross-examine any of its witnesses who have heretofore testified in this proceeding.

4. It is the position of your Petitioners that neither the applicant Pacific nor the other three telephone companies have sustained the burden of proof, as neither Pacific nor the other three companies have shown by clear and convincing evidence that there now exists an emergency financial condition that warrants the granting of immediate interim relief. The Commission, in a landmark decision (*Pacific Telephone and Telegraph Company* case, Decision No. 42530, 48 Cal. P. U. C. 487) on the issue of interim rate relief, held that it is necessary to find an *emergency* as a condition precedent to the granting of such relief. The Commission said at page 488:

> "* * * We conclude that this Commission has ample power and authority to grant an interim rate increase in this proceeding, provided that the record thus far developed discloses a state of facts warranting such relief. Therefore, the sole question before the Commission on this motion for an interim

rate increase is whether or not the record discloses an emergency condition that warrants the granting to this utility of immediate relief."

In later decisions the Commission has followed the principle laid down in the *Pacific Telephone and Telegraph* case (supra). In a 1951 decision (*Coast Counties Gas and Electric Company,* 50 Cal. P. U. C. 580) the Commission said:

"* * * We view an interim rate increase as an emergency measure, applicable only in the instance where the minimum financial obligations of the utility cannot be met prior to the establishment of definitive rates."

This same principle has been restated and followed in Decision No. 47245 (*Motor Truck Association of Southern California and Truck Owners Association of California,* 51 Cal. P. U. C. 758, 760) and in Decision No. 48743 (*Property Transportation Rates* in *San Francisco Bay Counties Territory,* 52 Cal. P. U. C. 606, 614).

Results of operations at present rates for estimated year 1957 showing per cent returns of 5.21% for California, 5.89% for General, 5.97% for Pacific and 5.67% for Sunland-Tujunga show very clearly that there is no present financial emergency facing any of these companies. In other words, the issue before the Commission is whether these utilities are now in a precarious or other serious financial position and not whether they are now earning or will earn a reasonable return. And with respect to General, in whose service area your Petitioners

are located, their own estimate for 1958 at present rates (prior to the interim order) indicated a return of 5.29%. That certainly does not represent an emergency financial condition, although General may claim it may not be a reasonable return on General's rate base which latter issue is to be determined in their recently filed case.

5. As was very clearly and fully developed at the hearing on this motion in San Francisco, no notice was given to the ratepayers in General's service area with respect to the hearing on said motion. The motion was filed in Pacific's rate increase proceedings and Pacific gave notice only to those ratepayers located within its service areas and with respect to its own rate increase application. When General joined in said motion no notice had been given its ratepayers. This resulted in a lack of opportunity for General's ratepayers to appear and cross-examine the witnesses testifying in support of said motion, and there was no adequate opportunity for interested parties to present testimony and evidence in opposition to said motion. This lack of notice and lack of adequate opportunity to cross-examine the witnesses testifying in support of said motion, in the opinion of your Petitioners, clearly constitutes a violation of constitutional rights guaranteed by the 14th Amendment to the Constitution of the United States and by Article 1, Section 13 of the Constitution of the State of California, and has deprived your Petitioners of their aforesaid constitutional rights.

Wherefore, Petitioners respectfully pray that this Honorable Commission grant a rehearing in this matter of all issues of fact and law with respect to the motion for interim rate relief; that Decision and Order No.

55936, dated December 10, 1957, be set aside and vacated; and for such other relief as may seem just and meet in the premises.

Respectfully submitted,

WALHFRED JACOBSON, City Attorney of the City of Long Beach
By /s/ Leslie E. Still, Jr.
LESLIE E. STILL, JR.
Deputy City Attorney
/s/ D. Patrick Ahern
D. PATRICK AHERN, in Propria Persona
/s/ John F. Baker
JOHN F. BAKER, In Propria Persona
/s/ William T. Dalessi
WILLIAM T. DALESSI, In Propria Persona
/s/ Gerald Desmond
GERALD DESMOND, In Propria Persona
/s/ Charles R. Dooley
CHARLES R. DOOLEY, In Propria Persona
/s/ Charles M. Garrison
CHARLES M. GARRISON, In Propria Persona
/s/ Walhfred Jacobson,
WAHLFRED JACOBSON, In Propria Persona
/s/ Ray C. Kealer
RAY C. KEALER, In Propria Persona
/s/ Lewis D. Reese
LEWIS D. REESE, In Propria Persona
/s/ Virgil H. Sponberg
VIRGIL H. SPONGBERG, In Propria Persona

Certificate of Service.

I hereby certify that I have this day served the foregoing document upon all known parties of record in this proceeding by first class mail a copy thereof properly addressed to each such party or his attorney.

Dated at Long Beach, California, this 20th day of December, 1957.

/s/ Leslie E. Still, Jr.
LESLIE E. STILL, JR.
Deputy City Attorney
City of Long Beach

APPENDIX E.

Decision No. 56048.

Before the Public Utilities Commission of the State of California.

In the Matter of the Application of The Pacific Telephone and Telegraph Company, a corporation, for authority to increase certain intrastate rates and charges applicable to telephone service furnished within the State of California. Application No. 39309.

California Water & Telephone Company, a corporation, Complainant, vs. Pacific Telephone and Telegraph Company, a corporation, Defendant. Case No. 5974.

The Pacific Telephone and Telegraph Company, a corporation, Complainant, vs. General Telephone Company of California, a corporation, California Water & Telephone Company, a corporation, and Sunland-Tujunga Telephone Company, a corporation, Defendants. Case No. 5983.

OPINION AND ORDER DENYING REHEARING.

The City of Los Angeles and Roger Arnebergh, as a subscriber of The Pacific Telephone and Telegraph Company, have filed their joint petition for rehearing respecting Decision No. 55936, rendered herein on December 10, 1957.

In fairness to the record herein, we are constrained to point out that Mr. Arnebergh is the City Attorney of Los Angeles and, as such, is participating in these proceedings on behalf of the City of Los Angeles through one of his assistants and participated in the matter of the motion for interim rate relief, hereafter referred to.

Said petition for rehearing, allegedly, is premised upon the following grounds:

"(1) This Commission was and is without jurisdiction, power or authority to grant or authorize increases in subscribers' telephone rates as provided by Decision No. 55936, or to grant or authorize any other increases in subscribers' telephone rates, without completing a full hearing and investigation of the affairs and operations of the telephone companies involved.

"(2) It has not been made to appear to the Commission that The Pacific Telephone and Telegraph Company ('Pacific') is in a precarious financial condition, or that any emergency requires that its revenues or earnings be increased by an interim order before the completion of a full hearing and investigation into Pacific's affairs. On the contrary Exhibit 31, Chapter 4, Table B, shows that as of December 31, 1956, the company had an unappropriated earned surplus of $87,387,322.40. The record further shows that present earnings under existing rates are more than adequate to meet all expenses, including payment of dividends to stockholders at current rates, and, in addition, add substantially to such surpluses.

"(3) Similarly, it has not been made to appear to the Commission that General Telephone Company of California ('General') California Water & Telephone Company ('California'), or Sunland-Tujunga Telephone Company ('Sunland'), is in a precarious financial condition or that any other emergency requires that its revenues or earnings be increased by an interim order, without the completion of a full hearing and investigation by the Commission of its affairs.

"Consequently, this Commission was and is without jurisdiction, power or authority to make the findings or

orders with respect to those telephone corporations which are provided by its Decision No. 55936, by interim order.

"(4) Until the Commission has held a full hearing, and after such hearing has found that the rates charged are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the Commission is without jurisdiction, power, or authority to determine and fix, by order, the just, reasonable, or sufficient rate, and such hearing must include:

"(a) a full and complete presentation of evidence by the company or companies applying for such increase, which evidence, if not controverted, disproved, or discredited, would require an increase in rates;

"(b) a full opportunity to the public, representatives of municipalities and other interested parties to cross-examine applicant's witnesses;

"(c) an opportunity for the presentation of testimony and other evidence by the public, by representatives of municipalities, and other interested parties. Further, established practice has set the precedent of having a presentation made by the Commission's own staff, and it would be an abuse of discretion for the Commission to grant an increase in rates without first providing for a presentation of evidence by such staff, which is supported and paid for by the public for such purpose, among others.

"(5) The Commission is without jurisdiction, power or authority to make the findings or orders provided by its Decision No. 55936, by interim order.

"(6) The increases in rates to telephone subscribers authorized by Decision No. 55936 are applicable solely in the Los Angeles extended area. There was received in evidence in this consolidated proceeding Exhibit No. 63. Attached here, marked Exhibit "A", and by such ref-

erence made a part hereof, is a copy of Table 2 of such Exhibit 63. From evidence offered to the Commission by Pacific before the rendition of such decision on December 10, 1957, it appeared that in the first six months of 1957:

"(a) under present rates Pacific earned no less than 5.92% from its total intrastate operations;

"(b) although Pacific seeks rate increases to increase its total intrastate revenues by nearly $40,000,000 in order that its earnings therefrom will be at the rate of 6.91%, its earnings from its exchange operations within the Los Angeles extended area under present rates now exceed this rate of 6.91%.

"(c) Based on Pacific's actual operations during the first six months of 1957 its additional revenues solely from the increased rates authorized in the Los Angeles extended area would enable it to increase its earnings from total intrastate operations to 6.33%, by increases in its earnings from its exchange operations in the Los Angeles extended area from a minimum of 7.01% to at least 8.23%.

"The imposition upon the telephone subscribers in the Los Angeles extended area of such an unwarranted and unjustified burden is unreasonable, inequitable, discriminatory and unfair and on such account the Commission was and is without jurisdiction, power or authority to make the orders provided by Decision No. 55936, and such decision is unlawful."

The foregoing enumerated grounds are rationalized by petitioners in the succeeding pages of their petition and are restated in divers and sundry ways but the burden of the petition is that due process of law was denied petitioners, lawful notice of the proposed interim increase of

rates was not given, that the telephone companies involved were not entitled to a rate increase in the Los Angeles area and that the Commission was without jurisdiction to grant the interim rate increase without a full and complete showing by not only the telephone companies but, also, the Staff of the Commission and the protesting and interested parties.

The record in these proceedings and the law constitute a complete refutation of petitioners' unsupported allegations.

Rate relief may be granted to a public utility *ex parte* or after public hearing upon such notice as the Commission may prescribe. (Section 1707, Public Utilities Code; Clemmons v. Railroad Commission, 173 Cal. 254, 258.)

Furthermore, the Commission represents the public interest in the field of public utility regulation and is charged with the protection of that interest. (United States v. Merchants and Manufacturers Assn., 242 U. S. 178, 188, 61 L. ed. 233, 239; Hanlon v. Eshelman, 169 Cal. 200, 202-203; Sale v. Railroad Commission, 15 Cal. (2d) 612, 617-618.) The fact that a disappointed party makes unfounded charges in a petition for rehearing respecting Commission action is no proof that the Commission has failed to lawfully discharge its public trust.

It is elementary law that a regulatory body may grant interim rate relief pending the final decision in the proceeding.

The repeated assertion by petitioners in their petition for rehearing that a full hearing was not accorded the parties on the motion by the telephone companies for interim relief is incorrect and the record irrefutably so shows. Hearings on the two complaints were held on

September 19, 20, and 26, 1957. On the latter day (September 26, 1957) evidence was adduced relative to the multi-message unit traffic interchanged between the four companies in the Los Angeles extended area. On the third day of hearing in the application proceeding (September 27, 1957) the complaint matters were consolidated with the application proceeding. On that date the four telephone utilities made a motion for interim relief, and hearings thereon were held on September 27, October 3, 4, and 10, 1957. Petitioner City of Los Angeles appeared at all of the above hearings.

After the telephone companies had presented their evidence in support of such motion and the protesting and interested parties including the City of Los Angeles, had cross-examined the witnesses for the telephone companies, the presiding officer inquired of these parties if they had any evidence to offer in connection with the motion for interim relief and they answered in the negative. No suggestion or request was made by any of these parties for a continuance to enable said parties to present evidence. Also, the motion for interim rate relief was argued by the parties, including the City of Los Angeles and other protesting and interested parties. In these circumstances, the repeated insinuation of petitioners that the interested parties were denied an opportunity to be heard and that a full hearing was not had on the motion for interim relief is disingenuous, to say the very least.

After careful consideration of petitioners' numerous objections, we fail to find any of them meritorious.

The petition for rehearing having been filed in time to suspend the order until granting or denial of rehearing, it is necessary to amend the order to provide that

the revised tariff schedules shall become effective for service furnished on and after a date later than that specified in the decision. Therefore, It Is Ordered that ordering paragraphs 1, 2, and 3 of Decision No. 55936 are hereby amended by substituting for the words "January 6, 1958" the words "January 20, 1958."

It Is Further Ordered that the petition for rehearing filed herein be and the same is hereby denied.

Dated at San Francisco, California, this 7th day of January, 1958.

PETER E. MITCHELL
President

RAY E. UNTEREINER
MATTHEW J. DOOLEY
REX HARDY
C. LYN FOX
Commissioners

APPENDIX F.

Decision No. 56049.

Before the Public Utilities Commission of the State of California.

In the Matter of the Application of The Pacific Telephone and Telegraph Company, a corporation, for authority to increase certain intrastate rates and charges applicable to telephone service furnished within the State of California. Application No. 39309.

California Water & Telephone Company, a corporation, Complainant, vs. The Pacific Telephone and Telegraph Company, a corporation, Defendant. Case No. 5974.

The Pacific Telephone and Telegraph Company, a corporation, Complainant, vs. General Telephone Company of California, a corporation, California Water & Telephone Company, a corporation, and Sunland-Tujunga Telephone Company, a corporation, Defendants. Case No. 5983.

Order Denying Rehearing.

City of Long Beach, and D. Patrick Ahern, John F. Baker, William T. Dalessi, Gerald Desmond, Charles Dooley, Charles M. Garrison, Wahlfred Jacobson, Ray C. Kealer, Lewis D. Reese and Virgil H. Spongberg, as ratepayers and individuals, having filed their joint petition for rehearing respecting Decision No. 55936, rendered herein on the 10th day of December, 1957; the Commission having considered said petition and finding no cause for granting the same,

It Is Ordered that said petition for rehearing, filed herein, be and the same is hereby denied.

Dated at San Francisco, California, this 7th day of January, 1958.

PETER E. MITCHELL
President

RAY E. UNTEREINER
MATTHEW J. DOOLEY
REX HARDY
C. LYN FOX
Commissioners

APPENDIX G.

Excerpts From Relevant Constitutional and Statutory Provisions.

From Section 1, Fourteenth Amendment to the Constitution of the United States:

". . . No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

From Article XII of the Constitution of the State of California:

"Section 22. The Railroad Commission is continued in existence as the Public Utilities Commission, which shall consist of five members. The commission shall be appointed by the Governor from the State at large; . . . No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the commission, and every order made by a commissioner so designated, pursuant to such inquiry, investigation or hearing, when approved or confirmed by the commission and ordered filed in its office, shall be deemed to be the order of the commission.

"* * *

"No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon the Public Utilities Commission additional pow-

ers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Public Utilities Commission in this Constitution, and the authority of the Legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this Constitution.

"* * *

"Whenever in this Constitution or the laws of this State 'Railroad Commission' is used, it shall be deemed to refer to the Public Utilities Commission.

"Section 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any . . . plant, or equipment, or any part of such . . . plant or equipment within this State, . . . for the transmission of telephone . . . messages, . . . either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the Legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the Legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution. . . ."

From the Public Utilities Code of the State of California:

"Section 20. 'Commission' means the Public Utilities Commission created by Section 22 of Article XII of the State Constitution, and 'commissioner' means a member of the commission."

"Section 216.(a) 'Public utility' includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof."

"Section 304. . . . The commissioners shall be civil executive officers. . . ."

"Section 310. . . . The evidence in any investigation, inquiry, or hearing may be taken by the commissioner or commissioners to whom such investigation, inquiry, or hearing has been assigned or, in his or their behalf, by an examiner designated for that purpose. . . ."

"Section 451. All charges demanded or received by any public utility, or by any two or more public utilities, for . . . any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such . . . service is unlawful.

"* * *

"All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

"Section 453. No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant

any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. The commission may determine any question of fact arising under this section."

"Section 454. No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon a showing before the commission and a finding by the commission that such increase is justified."

"Section 455. Whenever any schedule stating an individual or joint rate, classification, contract, practice, or rule, not increasing or resulting in an increase in any rate, is filed with the commission, it may, either upon complaint or upon its own initiative, at once and if it so orders without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, enter upon a hearing concerning the propriety of such rate, classification, contract, practice, or rule. Pending the hearing and the decision thereon such rate, classification, contract, practice or rule shall not go into effect. The period of suspension of such rate, classification, contract, practice, or rule shall not extend beyond 120 days beyond the time when it would otherwise go into effect unless the commission extends the period of suspension for a further period not exceeding six months. On such hearing the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable.

"All such rates, classifications, contracts, practices, or rules not so suspended shall become effective on the expiration of 30 days from the time of filing thereof with the commission or such lesser time as the commission may grant, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify them."

"Section 489. Under such rules as the commission prescribes, every public utility other than a common carrier shall file with the commission within such time and in such form as the commission designates, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together with all rules, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service. Nothing in this section shall prevent the commission from approving or fixing rates, tolls, rentals, or charges, from time to time, in excess of or less than those shown by such schedules."

"Section 490. The commission may from time to time determine and prescribe by order such changes in the form of the schedules referred to in this article as it finds expedient, and may modify the requirements of any of its orders or rules in respect to any matter referred to in this article."

"Section 491. Unless the commission otherwise orders, no change shall be made by any public utility in any rate or classification, or in any rule or contract relating to or affecting any rate, classification, or service, or in any privilege or facility, except after 30 days' notice to the commission and to the public. Such notice shall be given by

filing with the commission and keeping open for public inspection new schedules stating plainly the changes to be made in the schedule or schedules then in force, and the time when the changes will go into effect. The commission, for good cause shown, may allow changes without requiring the 30 days' notice, by an order specifying the changes so to be made, the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed in any rate or classification, or in any form of contract or agreement or in any rule or contract relating to or affecting any rate, classification, or service, or in any privilege or facility, attention shall be directed to such change on the schedule filed with the commission, by some character to be designated by the commission, immediately preceding or following the item."

"Section 701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

"Section 728. Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force."

"Section 729. The commission may, upon a hearing, investigate a single rate, classification, rule, contract, or

practice, or any number thereof, or the entire schedule or schedules of rates, classifications, rules, contracts, and practices, or any thereof, of any public utility, and may establish new rates, classifications, rules, contracts, or practices or schedule or schedules in lieu thereof."

"Section 734. When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation. No order for the payment of reparation upon the ground of unreasonableness shall be made by the commission in any instance wherein the rate in question has, by formal finding, been declared by the commission to be reasonable, and no assignment of a reparation claim shall be recognized by the commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership, or order of court."

"Section 735. If the public utility does not comply with the order for the payment of reparation within the time specified in the order, suit may be instituted in any court of competent jurisdiction to recover the payment within one year from the date of the order, and not after. . . ."

"Section 1001. No . . . telephone corporation . . . shall begin the construction of . . . a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present

or future public convenience and necessity require or will require such construction.

". . . If any public utility, in constructing or extending its line, plant, or system, interferes or is about to interfere with the operation of the line, plant, or system of any other public utility, already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable."

"Section 1701. All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission."

"Section 1702. Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness

of any rates or charges of any gas, electrical, water, or telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service."

"Section 1705. At the time fixed for any hearing before the commission or a commissioner, or the time to which the hearing has been continued, the complainant and the corporation or person complained of, and such corporations or persons as the commission allows to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision. A copy of such order, certified under the seal of the commission, shall be served upon the corporation or person complained of, or his or its attorney. The order shall, of its own force, take effect and become operative 20 days after the service thereof, except as otherwise provided, and shall continue in force either for a period designated in it or until changed or abrogated by the commission. If the commission believes that an order cannot be complied with within 20 days, it may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may on application and for good cause shown, extend the time for compliance fixed in its order."

"Section 1706. A complete record of all proceedings and testimony before the commission or any commissioner on any formal hearing shall be taken down by a reporter

appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review an order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced, and of the pleadings, record, and proceedings in the cause, shall constitute the record of the commission, but if the petitioner and the commission stipulate that certain questions alone and a specified portion only of the evidence shall be certified to the Supreme Court for its judgment, such stipulation and the questions and the evidence therein specified shall constitute the record on review."

"Section 1707. Any public utility may complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard *ex parte* by the commission or may be served upon any parties designated by the commission."

"Section 1709. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive."

"Section 1731. After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in

any court to any corporation or person unless the corporation or person has made, before the effective date of the order or decision, application to the commission for a rehearing."

"Section 1732. The application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in the application."

"Section 1733. Any application for a rehearing made 10 days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before the effective date, or the order shall stand suspended until the application is granted or denied. Any application for a rehearing made within less than 10 days before the effective date of the order as to which a rehearing is sought, and not granted within 20 days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for the period of the pendency of the application."

"Section 1756. Within 30 days after the application for a rehearing is denied, or, if the application is granted, then within 30 days after the decision on rehearing, the applicant may apply to the Supreme Court of this State for a writ of certiorari or review for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. The writ shall be made returnable not later than 30 days after the date of issuance, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the Supreme Court, unless for a good reason shown it is continued."

"Section 1757. No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of this State. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review except as provided in this article. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination."

"Section 1758. The commission and each party to the action or proceeding before the commission may appear in the review proceeding. Upon the hearing the Supreme Court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable and not in conflict with the provisions of this part, apply to proceedings instituted in the Supreme Court under the provisions of this article."

"Section 1759. No court of this State, except the Supreme Court to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, except that the writ of mandamus shall lie from the Supreme Court to the commission in all proper cases."

"Section 1760. In any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final."

"Section 1761. The pendency of a writ of review shall not of itself stay or suspend the operation of the order or decision of the commission, but during the pendency of the writ the Supreme Court in the manner provided in this article in its discretion may stay or suspend in whole or in part the operation of the commission's order or decision."